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The rights of indigenous peoples in Asia

Human rights-based overview of national legal and policy frameworks against the backdrop of country strategies for development and poverty reduction

Stefania Errico

Gender,
Equality
and Diversity
Branch

Regional Office
for Asia and
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Preface

The ILO's strategy for action concerning indigenous and tribal peoples places the promotion of indigenous peoples' rights squarely in the context of inclusive and sustainable development.* The strategy emphasizes the development of knowledge on the situation of indigenous peoples, which is of key importance as countries are setting out to devise new strategies and programmes to implement the Sustainable Development Goals.

Over recent years, the ILO has undertaken a number of country studies on indigenous peoples in Asia, several of them jointly with the Asia Indigenous Peoples Pact (AIPP) and with the support of the European Union. The studies have shed some light on the present state of national laws and policies addressing indigenous peoples' rights and issues.

The present study, which draws on previous ILO and AIPP work, was prepared to provide a regional overview designed to inform future policy debates and interventions, and also to support efforts to promote the ratification of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), in the region.

The report seeks to draw a realistic picture of major trends and challenges, and identifies important new opportunities in the framework of the new global agendas on sustainable development and climate action, which call for specific attention regarding the rights and concerns of indigenous peoples.

We would like to express our sincere gratitude to the study's author, Stefania Errico, an independent consultant and expert on indigenous peoples' issues, who has previously worked at the ILO. We acknowledge with thanks the contributions of Martin Oelz of the ILO's Gender, Equality and Diversity Branch (GED) who coordinated the study, Rishabh Kumar Dhir (GED), Joni Simpson (ILO Decent Work Country Team Bangkok), Lee Swepston, former ILO Senior Adviser on human rights, and also an anonymous external peer reviewer who provided valuable feedback.

It is hoped that the study will be helpful in supporting the work of ILO constituents and partners, including indigenous peoples, the United Nations system, and other development partners, as they engage in national, regional and global efforts to make sustainable and inclusive development a reality for all.

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* The strategy is available at www.ilo.org/indigenous.

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Abbreviations

ACHPR	African Commission on Human and Peoples' Rights
ADB	Asian Development Bank
AIIB	Asian Infrastructure Investment Bank
AIPP	Asia Indigenous Peoples Pact
AMAN	Alliance of Indigenous Peoples of the Archipelago (Indonesia)
CCPR	UN Human Rights Committee
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
CEDAW	UN Committee on the Elimination of Discrimination against Women
CERD	UN Committee on the Elimination of Racial Discrimination
CESCR	UN Committee on Economic, Social and Cultural Rights
CRC	UN Committee on the Rights of the Child
HRC	UN Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFAD	International Fund for Agricultural Development
ILO	International Labour Organization
IWGIA	International Work Group for Indigenous Affairs
JOAS	Jaringan Orang Asal SeMalaysia (Malaysian indigenous peoples' network)
MDG	Millennium Development Goals
NCIP	National Commission on Indigenous Peoples (the Philippines)
NPDIP	National Policy on the Development of Indigenous Peoples (Cambodia)
REDD	Reducing emissions from deforestation and forest degradation
SDGs	Sustainable Development Goals
SUHAKAM	Suruhanjaya Hak Asasi Manusia Malaysia (Malaysian Human Rights Commission)
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNICEF	United Nations Children's Fund
UNFPA	United Nations Population Fund
UN-Women	United Nations Entity for Gender Equality and the Empowerment of Women

1. Introduction

1.1. Indigenous peoples in Asia: at risk of falling further behind

Two thirds of the world's indigenous peoples are estimated to live in Asia,¹ in other words approximately 260 million people representing 2,000 distinct civilizations and languages (UN 2014a, AIPP, IWGIA 2010). The distinctive nature of indigenous peoples derives from their specific lifestyles, cultures, customs and social institutions and the way in which their culture and existence are built on their special relation with the lands and territories that they have traditionally occupied or used.

The different terms used to refer to them at the national level, ranging from “hill tribes” and “minority nationalities”, to “tribal peoples”, “ethnic minorities”, and “natives”, testify to the variety of their experiences in the region, and also to the varying legal recognition accorded to them in their respective countries (UN 2013a, UN 2007). Yet, such diversity notwithstanding, the situation of these people shows important commonalities and consequent similar challenges concerning their persisting marginalization, which has cultural, social, economic and political dimensions (UN 2013a, Erni, 2012).

A recent report by the World Bank identifies the achievement of more inclusive growth as a major challenge facing the region and calls for a renewed focus on boosting inclusion in Asia (World Bank 2016, p. 39). This applies in particular to the current situation of indigenous peoples in the region. Thus, indicators such as under-five mortality, water deprivation, malnutrition, literacy, and net primary-school enrolment for indigenous peoples in Asia remain worse than population averages (World Bank 2011).

Even though poverty rates have declined among indigenous peoples as a result of the sustained growth and poverty reductions efforts of the region, important gaps are found between indigenous and non-indigenous segments of the populations. In certain cases inequalities are even widening (OECD 2013, World Bank 2011). Estimates suggest that, overall, one third of the indigenous peoples living in Asia are poor (ODI 2014). In the Lao People's Democratic Republic, for example, people belonging to minority groups constitute 80 per cent of the poor, while representing one third of the population (OECD 2013). In Viet Nam, 66.3 per cent of ethnic minorities live in poverty, compared to 12.9 per cent of the majority group. As observed by the World Bank regarding that country, “ethnic minority poverty is a growing and persistent challenge” to what has been deemed to be a “development success story” (World Bank 2012, p. 2). Similarly, in India, the “scheduled tribes” are disproportionately represented among people living below the poverty line (Dhir 2015). Statistics only provide a partial picture of the situation, however, as important aspects of poverty, such as powerlessness, lack of voice, loss of cultural identity, are not captured by those figures (World Bank 2000).

1 According to estimates by the World Bank, 80 per cent of the world's indigenous people live in Asia (World Bank 2011).

1.2. Global agendas on indigenous peoples' rights, sustainable development and climate change: interlinked and mutually reinforcing

The adoption of international instruments specifically protecting the rights of indigenous peoples at the international level, namely the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), are considered historic milestones in the promotion and protection of human rights. These instruments articulate the rights of indigenous peoples with due regard to their specific cultural, historical, social and economic circumstances (UN 2008a).

On the occasion of the 2014 World Conference on Indigenous Peoples, UN Member States unanimously reaffirmed their commitment to respect, promote and advance and in no way diminish the rights of indigenous peoples and to uphold the principles of the Declaration and encouraged those States that had not yet done so to consider ratifying Convention No. 169.² The World Conference also highlighted the contribution of indigenous peoples to sustainable development and to climate change mitigation and adaptation.³

A study by the ILO has found that poverty reduction strategies may risk failing to address or may even aggravate the situation of indigenous peoples, in the absence of a human rights-based approach (ILO 2008). As highlighted by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), Convention No. 169 “provides important elements for overcoming discrimination against indigenous and tribal peoples and ensuring their equality of opportunity and treatment” (CEACR 2012, para. 772). In turn, the UN Committee on Economic, Social and Cultural Rights emphasized that “the application of the international human rights normative framework to these issues helps to ensure that essential elements of anti-poverty strategies, such as non-discrimination, equality, participation and accountability, receive the sustained attention they deserve” (CESCR 2001, para. 9).⁴

Poverty is a complex and multifaceted problem that requires a comprehensive and holistic approach addressing its economic, social, political and environmental dimensions and the root causes of persisting inequalities and social exclusion. Convention No. 169 and UNDRIP provide useful guidance in this regard, as States in the region prepare to implement the new interlinked global agendas on sustainable development and climate change.⁵ Indeed, these agendas are displaying an unprecedented convergence towards human rights-based approaches.

2 See the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, adopted by the United Nations General Assembly in resolution 69/2 of 22 September 2014, paragraphs 4, 6 and 34.

3 Ibid., paragraphs 34–37.

4 The UN guiding principles on extreme poverty and human rights, which were adopted by the Human Rights Council by consensus on 27 September 2012, are based on the understanding that “eradicating extreme poverty is not only a moral duty but also a legal obligation under existing international human rights law. Thus, the norms and principles of human rights law should play a major part in tackling poverty and guiding all public policies affecting persons living in poverty” (UN 2012a, p. 2).

5 The 2030 Agenda acknowledges the interrelated environmental, social and economic dimensions of sustainable development. In its turn, the Paris Agreement on climate change recognizes the “intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty” (Preamble) and sets out to “strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty” (art. 2).

Inequalities and poverty are key challenges to sustainable development and this has informed the 2030 Agenda for Sustainable Development, set out in the outcome document of 2015 UN Sustainable Development Summit, “Transforming our world”.⁶ It thus provides an exceptional opportunity to tackle them in a coherent and systematic fashion and with the participation of the peoples concerned, in keeping with the agreed objectives to “build peaceful, just and inclusive societies, end poverty and hunger everywhere and combat inequalities” (UN 2015a, para. 3).

Pledging to leave no one behind, the 2030 Agenda is also expressly grounded on human rights and is informed by the UN Declaration on the Right to Development (para. 10). It stresses that development strategies designed to implement the Agenda should be coherent and consistent with international human rights obligations (para. 10). According to a study by the Danish Institute for Human Rights, 156 of the 169 targets under the Sustainable Development Goals (SDGs) have substantial linkages with UN and ILO Conventions on human and labour rights (DIHR 2016). Indigenous peoples are explicitly referred to under two SDGs⁷ and most other SDGs have a direct bearing on the rights and well-being of these peoples (ILO 2016a). Furthermore, the Agenda encourages States to conduct regular and inclusive reviews of the progress made, drawing on the contributions from indigenous peoples (para. 79).

The Paris Agreement on climate change, adopted in December 2015, is the first agreement on this vital matter, and one of the first environmental agreements of any type which expressly recognizes the relevance of human rights (UN 2016a). In its preamble the Agreement states that, when taking action to address climate change, States Parties should respect, promote and consider their respective obligations regarding human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations, the right to development, and gender equality.

The Agreement stipulates that adaptation action should take into account indigenous peoples’ traditional knowledge (art. 7). It underscores the interlinkages between climate change impact and interventions and equitable access to sustainable development and eradication of poverty (preamble). It thus mirrors the findings of the Intergovernmental Panel on Climate Change, according to which people “who are socially, economically, culturally, politically, institutionally or otherwise marginalized are especially vulnerable to climate change and also to some adaptation and mitigation responses” (IPCC 2014, p. 9). The same report identifies indigenous peoples’ traditional knowledge as a major resource for adaptation strategies to climate change.

It should also be recalled that the enhanced version of the UN mechanism for reducing emissions from deforestation and forest degradation in developing countries, known as REDD-plus, which has been introduced in the global negotiations on climate change as a mitigation strategy, has been accompanied by specific safeguards requiring respect for indigenous peoples’ rights, their full and effective participation and attention to their sustainable livelihoods (UNFCCC COP 2010).

At the same time, a growing number of studies have recognized the role played by indigenous communities’ traditional land management practices in biodiversity conservation. Biodiversity-rich

⁶ The 2030 Agenda provides an integrated framework for development policies grounded on three pillars, economic, social and environmental, and comprising 17 goals (the SDGs) and 169 targets that shall guide international, regional and national development efforts for the next 15 years.

⁷ See indicators 2.3, under SDG 2 and 4.5, under SDG 4.



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terrestrial and marine habitats that are successfully managed outside government-designated protected areas are estimated to be roughly equal in area to the total protected areas (UNESCO 2016). The Convention on Biological Diversity provides for respect for and the preservation and maintenance of knowledge, innovations and practices of indigenous and local communities, and the promotion of their wider application with the approval and involvement of the holders of such knowledge, innovations and practices. It also stipulates that the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices shall be encouraged (art. 8 (j) of the Convention).

As noted by the ILO, progress on the achievement of the SDGs will be conditional upon the promotion of sustainable rural livelihoods (ILO 2016b). Poverty remains a predominantly rural problem,⁸ with agriculture being the largest employer in the world and the sector on which most of the world's poor depend (ILO 2016b, UN 2012b). It is also one of the sectors most affected by the impact of climate change and mitigation and adaptation strategies. Indigenous peoples figure prominently among the key actors of any strategy concerning these areas.

As shall be described in the following chapters, land and natural resources are at the core of the livelihood, ways of life, and culture of the large majority of indigenous peoples in Asia. These people also represent the large majority of the 60 million people worldwide who depend on forests for their subsistence (FPP 2012). In Asia, indigenous peoples inhabit the most fragile ecosystems, ranging from tropical rainforests to high mountain areas, low-lying coasts and flood-pains (AIPP, IWGIA 2010). While their traditional knowledge is a precious resource for climate change adaptation, their close attachment to their territory and dependence on natural resources entails a special vulnerability to the impacts of climate change, which differ for indigenous women and men, and heightens their dependence on mitigation and adaptation measures, necessitating their effective participation in any measures adopted to address them.

⁸ Over 80 per cent of the poor in developing and emerging countries live in rural areas and nearly two thirds of the working extreme poor are employed in agriculture (ILO 2016b).

1.3. Purpose of the study: taking stock and looking ahead

The overall framework constituted by the interlinked global policy agendas described above calls for the building of coherent approaches and policies for reaching their respective goals, which include the promotion and protection of the rights of indigenous peoples as an empowering transversal strategy. In other words, making progress in implementing the 2030 Agenda for Sustainable Development and the Paris Agreement on climate change will also require renewed efforts in addressing indigenous peoples' rights.

To underpin these efforts, the present study takes stock of and provides an overview on national legal and policy frameworks relevant for the promotion and protection of these peoples in Asia, a region where comprehensive information on these issues has been scarce. Up to the present time, research of this nature has largely focused on other regions (see, for example, World Bank 2011, ILO, ACPHR 2009).

With the aim of contributing to closing knowledge gaps concerning laws and public policies regarding indigenous peoples in the region, over the period 2010–2015, the ILO commissioned a number of country studies of varying scope concerning the legal and policy frameworks on indigenous peoples in Bangladesh, Cambodia, India, Indonesia, Malaysia, Nepal, the Philippines, Thailand and Viet Nam. In 2015, it also undertook a study providing an overview, more particularly, on the situation of indigenous peoples in the world of work in a number of selected Asian countries (Dhir 2015). At the same time, studies on the status of indigenous peoples' rights in the Asian countries have been carried out, in recent years, by the Asia Indigenous Peoples Pact (AIPP),⁹ the International Fund for Agricultural Development (IFAD), the Asian Development Bank and the World Bank.

Building on existing research and reports and guided by Convention No. 169 and UNDRIP, the present study seeks to provide a human rights-based overview of national laws and policies regarding indigenous peoples in Asia in four main thematic areas, namely, the identification and recognition of indigenous peoples; consultation and participation; land and natural resources; and public policies on cultural, social and economic rights.

Although it has as its overall reference framework Convention No. 169 and UNDRIP, the study does not attempt to assess or draw conclusions about the conformity of the national legal and policy frameworks with these or other international instruments. Rather, it aims to identify broader gaps and challenges and related policy recommendations towards enhancing the promotion and realization of indigenous peoples' rights as an integral part of fostering inclusive and sustainable development in Asia.

Accordingly, the study aims to inform national efforts mounted for the implementation of the SDGs, and to highlight the key relevance for right-based approaches in this regard. It also seeks to seize the opportunity for enhancing the cooperation and coherence that the SDGs offer to UN agencies in their efforts to support States.

⁹ AIPP is a regional organization founded in 1988 by indigenous peoples' movements comprising 47 member organizations, including six indigenous women's organizations, from 14 countries. For more information, see www.aippnet.org.

1.4. Methodology, scope and limitations

This study is based on a desk review and analysis of national legislation and policies, and relevant reports and country studies that figure in the list of reference provided at the end of the text. The reports and studies that were reviewed and used to prepare the study include the following:

- Published and unpublished ILO country studies on indigenous peoples in Asia and other recent ILO reports on indigenous peoples in the region;
- AIPP studies on indigenous peoples in member countries of the Association of Southeast Asian Nations (ASEAN);
- IFAD country technical notes on indigenous peoples' issues, World Bank and the Asian Development Bank reports (not older than five years), and also other available reports and studies that complement the information base for the report;
- Observations and direct requests by the ILO CEACR related to relevant ILO Conventions, and concluding observations by the UN treaty bodies (not older than five years);
- Reports submitted to the UN Human Rights Council by the Council's Special Rapporteur on the rights of indigenous peoples and other thematic mandates, including the Special Rapporteurs on the right to food, adequate housing, cultural rights and the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

Taking into consideration the information available, the geographical scope of the study covers a selection of countries in South Asia and South-East Asia, namely: Bangladesh, Cambodia, India, Indonesia, the Lao People's Democratic Republic, Malaysia, Nepal, the Philippines, Thailand, and Viet Nam. The study thus covers two sub-regions within each of which situations regarding indigenous peoples share certain communalities. Future research should cover other parts of Asia as well as the Pacific.

Among the countries covered in the study, only Nepal has ratified Convention No. 169, whereas India and Bangladesh have ratified ILO Indigenous and Tribal Populations Convention, 1957 (No. 107). On the other hand, all these countries have ratified UN human rights treaties or ILO Conventions relevant to the issues under review in this study and addressing the current marginalization of indigenous peoples, such as the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).¹⁰

The study aims to provide an overview rather than an exhaustive review of the situation and experiences in the countries examined. It should also be kept in mind that the study is primarily looking at the content of existing laws and policies, while not seeking to establish assessments of their implementation. Nevertheless, implementation challenges and gaps, as reported by other sources, have been included, as appropriate.

¹⁰ Myanmar and Thailand have not ratified the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Malaysia denounced that Convention in 1990.



In many cases the great variety in the scope, quantity and quality of the information available for these countries makes comparisons between them difficult. In addition, it should be clarified that the report refers to a wide range of peoples, groups and communities under the broader category of indigenous peoples. This does not imply, however, that it intends any determinations as to whether a specific group is to be considered as an indigenous people or that all of the groups referred to are necessarily recognized as indigenous peoples in their countries or self-identify as such. The objective was to cover groups that have been referred to in relevant national and international research on indigenous peoples.

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Text boxes have been used throughout the study to recall relevant provisions of Convention No. 169 and UNDRIP, illustrate country examples, or highlight the situation of specific subgroups within the indigenous population, such as indigenous women and children.

The study is divided into four main chapters, corresponding to the thematic areas examined, namely: identification of indigenous peoples; consultation and participation; land and natural resources; and public policies on cultural, social and economic rights, after which some conclusions and related recommendations are presented. The four thematic areas have been selected in the light of their central importance in and for Convention No. 169 and UNDRIP and because of their importance and direct relevance for achieving specific SDGs. The issue of identification and recognition of indigenous peoples is fundamental because, without it, an appropriate dedicated focus on these groups in public policies generally would be hard to achieve.

Table 1. Study's thematic focus areas and related SDGs

Identification of indigenous peoples	Cross-cutting relevance for all SDGs
Consultation and participation	<p>Cross-cutting relevance for all SDGs</p> <p>SDG 1 No poverty</p> <p>SDG 5 Gender equality</p> <p>SDG 8 Decent work and economic growth</p> <p>SDG 10 Reduced inequalities</p> <p>SDG 13 Climate action</p> <p>SDG 16 Peace, justice and strong institutions</p>
Land and natural resources	<p>SDG 1 No poverty</p> <p>SDG 2 Zero hunger</p> <p>SDG 5 Gender equality</p> <p>SDG 8 Decent work and economic growth</p> <p>SDG 13 Climate action</p> <p>SDG 14 Life below water</p> <p>SDG 15 Life on land</p>
Public policies on cultural, social and economic rights	<p>SDG 1 No poverty</p> <p>SDG 2 Zero hunger</p> <p>SDG 3 Good health and well-being</p> <p>SDG 4 Quality education</p> <p>SDG 6 Clean water and sanitation</p> <p>SDG 5 Gender equality</p> <p>SDG 8 Decent work and economic growth</p> <p>SDG 10 Reduced inequalities</p>

2. Identification of indigenous peoples and recognition of their rights

2.1. Concept of indigenous peoples in the Asian context and its relevance

In Asia, the concept of indigenous peoples is often subject to debate and questions. At the time of the adoption of UNDRIP, several Asian governments expressed reservations with regard to the application of the concept in their countries (Erni 2008).¹¹ Similar positions continue to be expressed at the UN or in other international forums. For example, on the occasion of the universal periodic review at the UN Human Rights Council, the representative of Indonesia pledged that country's support for the promotion and protection of the rights of indigenous peoples worldwide, while stating that Indonesia did not recognize the application to it of the indigenous people concept as defined in the UN Declaration on the Rights of Indigenous Peoples (UN 2012c, para. 6.3). Similarly, the representative of the Lao People's Democratic Republic affirmed, during the universal periodic review of his country, that no ethnic group in the country was considered as indigenous and all the 49 ethnic groups were equal (UN 2015b, p.12).

Despite the posting of such reservations by some countries in the region, others are using the concept of indigenous peoples in their national laws and policies and underlining the contributions made by these peoples to the development process. For instance, the Philippines has adopted specific legislation regarding indigenous peoples' rights and the Government has recently declared that, as it begins to implement the 2030 Agenda, governments should continue to engage in dialogue with and listen to the voices of the country's indigenous peoples. In the Government's view, recognition of their rights and aspirations would go a long way towards national unity and equitable, inclusive and sustainable development (Philippines 2015).

Cambodia has adopted a national policy on indigenous peoples. Nepal has ratified Convention No. 169, while for India and Bangladesh the ILO Indigenous and Tribal Populations Convention, 1957 (No. 107), remains in force.¹² Although it is not covered in the present study, it should be noted that Convention No. 107 is also in force for Pakistan. Significantly, the Asian Development Bank has adopted specific safeguards on indigenous peoples,¹³ as has the Asian Infrastructure Investment Bank (AIIB 2016).¹⁴

11 After the adoption of UNDRIP, for example, the representative of Indonesia declared that "the rights in the Declaration [...] did not apply in the context of Indonesia". Based on this understanding, "Indonesia would continue to promote the collective rights of indigenous peoples". Extracts of the statements are available at <http://www.un.org/press/en/2007/ga10612.doc.htm>. Of the countries examined for this report, only Bangladesh abstained during the vote on the adoption of UNDRIP at the UN General Assembly.

12 See more on the national recognition of indigenous peoples and the ratification of Convention No. 169 in the following chapter.

13 According to the Safeguard Policy Statement of the Asian Development Bank: "the term Indigenous Peoples is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees: (i) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; (ii) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; (iii) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and (iv) a distinct language, often different from the official language of the country or region" (ADB 2009, para. 6).

14 The environmental and social policy framework of the Asian Infrastructure Investment Bank contains standards on indigenous peoples and adopts the same understanding of the concept of indigenous peoples as the Asian Development Bank's safeguards (see

A significant number of groups in Asia identify themselves today as indigenous peoples and an indigenous peoples' movement has emerged. It encompasses regional organizations – starting with the Pacific-Asia Council of Indigenous Peoples and the aforementioned AIPP, established in the late eighties – along with numerous national organizations which actively take part in processes at various levels to promote the recognition of their rights, including human rights-related processes, climate change negotiations, discussions on biological diversity conservation, the development and implementation of the 2030 Agenda, and the design of the intellectual property rights regime.

While the engagement of indigenous peoples with international processes has borne fruit in unprecedented ways, for instance, as mentioned above, in the text of the Paris Agreement on climate change, such efforts have so far been less successful at the regional level in Asia. Despite the engagement of the indigenous peoples' movement during the drafting of the ASEAN Declaration on Human Rights, the text does not refer to indigenous peoples, but rather introduces the category of “vulnerable and marginalized groups” (ASEAN, 2013).

The main challenges in Asia with regard to the identification and recognition of certain groups as indigenous peoples in public policies seem thus far to have consisted, on the one hand, in a narrow understanding of the term, which is confined within the experience of European colonization (in other words indigenous peoples as the non-European population of European colonies), to which States have opposed the argument that their entire population is indigenous to the country. Thus, for example, it has been stated that “all Bangladeshis are indigenous peoples who existed in the territory prior to British colonization” (Kingsbury 1998, p. 433). On the other hand, the concept seems to have been associated with a focus on who came first (the notion of historical priority or precedence), that, in the complex context of the migration history of the region, becomes difficult to determine and usually inappropriate (Rehman, Hoffler 2009, Kingsbury 1998).¹⁵

This understanding differs significantly, however, from what the modern concept of indigenous peoples, as has been endorsed in the international standards, actually encompasses. Furthermore, indigenous peoples' rights are sometimes erroneously perceived – and rejected on that basis – as additional rights and privileges for certain groups, rather than the expression of universally applicable human rights and their realization through legitimate special measures.

As has been emphasized in other works, international standards on indigenous peoples' rights are concerned with addressing a social situation rather than establishing a priority based on whose ancestors had arrived in a particular area first (Lee, Tomei 1995, p. 9). The modern concept of “indigenous peoples” covers peoples who, in spite of their diversity and the variety of their historical experiences, share some common characteristics, namely: occupation and use of a specific territory and special attachment to it, as it has a fundamental importance for their collective physical and cultural survival as peoples; cultural distinctiveness, which may include the aspects of language, social organization, religion and spiritual values, modes of production, laws and insti-

the above footnote). The same approach has been adopted by the environmental and social framework of the New Development Bank (NDB 2016).

15 These arguments resonate with similar arguments put forward by African States during the negotiation of UNDRIP. In response, the African Commission on Human and Peoples' Rights has examined the issue and provided some clarification in its report of 2005, affirming the relevance of the concept of indigenous peoples in Africa (ACHPR 2005). Along with these arguments, a concern for the territorial integrity of the State is also raised (see, for examples, the statements made in connection with the adoption of UNDRIP at <http://www.un.org/press/en/2007/ga10612.doc.htm>).

tutions; an experience of subjugation, marginalization, dispossession, exclusion or discrimination; and self-identification, and also recognition by other groups, or by State authorities, as a distinct collectivity (Daes 1996, ACHPR 2005).

Convention No. 169 adopts an inclusive approach and refers to indigenous peoples and tribal peoples, in order to accommodate different local designations and terminology. Likewise, UNDRIP includes under the term “indigenous peoples” those groups referred to as “tribal” in Convention No. 169. Both are equally covered by the international legal standards on indigenous peoples’ rights, regardless of the terminology used at national level to describe them, and enjoy the same set of rights aimed at overcoming the discriminatory practices affecting them (ILO 2013). Self-identification is regarded as a fundamental criterion for the identification of indigenous and tribal peoples.

Table 2. Criteria for the identification of indigenous and tribal peoples under the Indigenous and Tribal Peoples Convention, 1989 (No. 169)

	Subjective criteria	Objective criteria
Indigenous peoples	Self-identification as belonging to an indigenous people.	Descent from populations who inhabited the country or geographical region at the time of conquest, colonization or establishment of present State boundaries. They retain some or all of their own social, economic, cultural and political institutions, irrespective of their legal status.
Tribal peoples	Self-identification as belonging to a tribal people.	Their social, cultural and economic conditions distinguish them from other sections of the national community. Their status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.

Source: ILO 2013, p. 2

In his report of 2013, the UN Special Rapporteur on the rights of indigenous peoples notes that “there are particular groups that distinguish themselves from the broader populations of the Asian countries and that fall within the scope of the international concern for indigenous peoples that has developed throughout the United Nations system” (UN 2013a, para. 6). He then goes on to say that those groups display distinct identities and ways of life and face very specific human rights issues related to histories of various forms of oppression, such as dispossession of their lands and natural resources and denial of cultural expressions (ibid., para.7).

Prior to the adoption of UNDRIP, the Asian indigenous movement itself felt the need for a collective reflection on the concept of “indigenous peoples” and its application to the region. The process led to the identification of common experiences and issues related to their history, identity and collective connection with a territory. In their own words, indigenous peoples in Asia have distinct lifestyles, cultures, customs and community-centric social and political institutions,

profoundly rooted in their histories and territories. Their livelihoods strongly depend on natural resources. They lived in their territories alongside other peoples who, in the course of history, have come to dominate them.

As a result, they have been politically, culturally and economically marginalized, especially in the wake of the formation of nation States. They have been subjected to assimilation policies and continue to suffer from the non-recognition of their customary rights over lands and resources (Erni 2012, p. 325). As for indigenous peoples in other parts of the world, their history of discrimination and marginalization is reflected in the terms used by the other segments of the population to name them, such as “*upajati*” in Bangladesh or “*sakai*” in Thailand, which all carry a derogatory connotation equivalent to “barbarian”, “primitive”, “uncivilized”, or “backward” (AIPP 2010).

Box 1. Identification of indigenous peoples

ILO CEACR has considered that, where communities meet the requirements of Article 1(1) of Convention No. 169, they must enjoy the full protection of the Convention regardless of differences from or similarities to other communities and irrespective of what they are called. (CEACR 2009)

2.2. National patterns of identification of indigenous peoples and recognition of their rights

The situation with regard to the identification of indigenous peoples and the recognition of their rights by the countries examined in this study varies greatly. The relevant laws and policies in some countries are guided by a contemporary understanding of the concept of indigenous peoples (Nepal, the Philippines and, to some extent, Cambodia). In other countries, groups that self-identify as indigenous peoples as such are given a special legal status by the Constitution, although they are not referred to as “indigenous peoples” but by other denominations.

Sometimes, indigenous peoples are the object of special legislation or are specifically referred to in certain laws, most often laws governing land rights. In other cases, their rights have been upheld by national courts or national human rights commissions and they have also been recognized as collective legal subjects. Moreover, as will be discussed in more detail in the following chapters, in most of the countries under review, national strategies for development and poverty reduction make reference to them and – although this occurs in much fewer cases – may envisage some specific and targeted actions.

This does not necessarily entail, however, recognition of their rights. In fact, as will be shown below, the degree of recognition of indigenous peoples’ rights varies significantly, particularly in terms of whether such recognition is accorded at an individual or collective level. There are also some inconsistencies across sectoral legislation, on the one hand, and between laws and policies, on the other.

In countries like Bangladesh, India, Indonesia, and Malaysia, indigenous peoples were given special legal status during the colonial era. It was, indeed, common practice for the colonial administrators to establish special laws and policies concerning non-majority groups, which included provision for the establishment of scheduled areas, frontier zones and other special arrangements (Kingsbury 1998). This approach was developed further with the formation of modern States and the adoption of constitutional guarantees and special legal provisions concerning certain groups.

In India, for example, the Constitution recognizes “scheduled tribes”.¹⁶ Articles 342 and 366 define them as “tribes or tribal communities or parts of or groups within such tribes or tribal communities” specified, by public notification, by the President to be deemed to be scheduled tribes for the purposes of the Constitution. The Constitution confers on them a special legal status, including reservation of seats in the legislative assemblies of the states and municipalities, along with special arrangements for the administration of their territories in accordance with the provisions of the Fifth and Sixth Schedule of the Constitution.



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¹⁶ The category of “scheduled tribes” is an administrative category used for the purpose of administering certain specific constitutional privileges, protection and benefits recognized in favour of specific section of peoples, historically considered “disadvantaged and backward” (ILO, AIPP 2010, p. 14).

Although no official criteria have been developed for the purpose of identifying scheduled tribes, in practice the identification occurs on the basis of the following characteristics: “(i) primitive traits; (ii) distinctive culture; (iii) geographical isolation; (iv) shyness of contact with the community at large; and (v) backwardness” (ILO, AIPP 2010, p. 14). According to a study by the ILO and AIPP, the category of “scheduled tribes” would include mostly “indigenous peoples”, although some ethnic groups which may also be regarded as indigenous peoples are not included. The list of scheduled tribes is not, however, a closed list and additional claims for inclusion as well as decisions on inclusions and exclusions from the list may be made in accordance with a dedicated procedure (ILO, AIPP 2010).

In Malaysia, the Federal Constitution recognizes what it refers to as the “natives” of Sabah and Sarawak in article 161, providing for them special rights in public employment, in the form of quotas, together with scholarships and educational benefits. The same recognition is, however, not accorded to the Orang Asli, the “aboriginal” peoples of Peninsular Malaysia, who are covered by article 160. This provision defines an “aborigine” as “an aborigine of the Malay Peninsula” and leaves the task of providing further specifications to the 1945 Aboriginal Peoples Act.

The Act and the Statement of Policy Regarding the Administration of the Orang Asli of Peninsular Malaysia have been regarded as generally paternalistic and assimilationist in their approach to the aborigines (JOAS 2015, AIPP 2015a). The Human Rights Commission of Malaysia has noted that, based on the criteria of Convention No. 169, indigenous peoples in Malaysia would include both the aborigines of Peninsular Malaysia and the natives of Sabah and Sarawak (Dhir 2015). In a recent statement made at the UN, the representative of the Government of Malaysia declared that the rights of indigenous peoples are a priority for the Government and affirmed that Malaysia remains committed to its obligation to implement the United Nations Declaration on the Rights of Indigenous Peoples (Malaysia 2015).

Regarding Bangladesh, the Constitution adopted at the time of the country’s independence from Pakistan in 1971 did not reinstate the special constitutional status that was once accorded to those who are regarded as the country’s indigenous peoples (Roy 2009). Rather, the Constitution recognizes “tribes, minor races, ethnic sects and communities” and calls upon the State to take steps to protect and develop their “unique local culture and tradition” (art. 23). It also refers to a “backward section of citizens”¹⁷ in various articles, thus laying the ground for the adoption of positive measures in favour of indigenous peoples with a view to addressing their situation of disadvantage and ensuring effective equality with the rest of the population (Roy 2009). “Backward segments of the population” is in fact the expression often used in official documents, along with “tribal peoples”, to refer to the indigenous peoples of the country (Enri 2012).

The indigenous peoples of the Chittagong Hill Tracts, known as “Pahari” (hill people) or “Jumma” (from shifting, or *jum*, cultivation), are furthermore the object of special legislation, following the 1997 Chittagong Hill Tracts Peace Accord. Conversely, the indigenous peoples of the plains, generally known as “Adivasi”, are only referred to in the 1950 East Bengal State Acquisition and Tenancy Act, which governs land administration in the plains, and therefore enjoy a much lower degree of recognition and protection (Roy 2009).

It should be noted, however, that the national sixth five-year development plan, with the theme “Accelerating growth and reducing poverty”, includes the implementation of UNDRIP and the ratification of Convention No. 169 among the actions to be considered. In 2013, the Government declared that Bangladesh’s consideration of the ratification of Convention No. 169 needed to be contextualized within the parameters of the Constitutional provisions and that, in the meantime, the Government, along with its social partners, would continue to implement the obligations under ILO Convention No. 107, to which Bangladesh was a party (UN 2013b, p. 3).¹⁸

Table 3. Overview of indigenous population in the countries under review

Country	Common external designation	Number of ethnic groups	Percentage of total national population
Bangladesh	Tribal peoples, Pahari, Jumma, Adivasi, ethnic groups and minorities	45	1.2–2.5 %
Cambodia	Indigenous minorities	19–21	0.9–1.4 %
India	Scheduled tribes, Adivasi	622–635	8.3 %
Indonesia	Masyarakat Adat	> 700	20–29 %
Lao PDR	Ethnic minorities	ca 200 (49 officially recognized “ethnic minorities”)	35–70 %
Malaysia	Natives, Orang Asli, Orang Asal	97	12 %
Myanmar	Ethnic minorities	135	30–40 %
Nepal	Indigenous nationalities, Adivasi, Janajati	> 80 (59 recognized “indigenous nationalities”)	37.1 %
Philippines	Indigenous peoples, indigenous cultural communities	110 officially recognized indigenous peoples	10–15 %
Thailand	Ethnic minorities, Hill tribes, Hill/Mountain people	> 50 (10 officially recognized “hill tribes”)	1.5 %
Viet Nam	Ethnic minorities	> 90 (43 officially recognized “ethnic minorities”)	13.8 %

Adapted from AIPP and IWGIA 2010, p. 6.

¹⁸ On the same occasion, the Government stated that, in accordance with the Constitution, there were no “indigenous minorities” or “groups” in Bangladesh and that all citizens of the country were indigenous to the land (UN 2013b, p. 5).

A constitutional form of recognition is also found in Indonesia. As a legacy of the country's colonial history, the category of "*masyarakat hukum adat*" or "*masyarakat adat*",¹⁹ in other words communities governed by customs or customary law societies, has persisted (AIPP 2015b). The national constitution, as amended in 2000, recognizes customary law societies and provides for respect of their customary rights "as long as they still exist and are in accordance with the society's development" (art. 18). Likewise, in article 28, it recognizes their cultural identity, but respect for their identity is ensured only so long as it is in line with "progress and civilization" (IFAD 2012a).

In 2003, the Constitutional Court recognized that indigenous peoples have legal personality as a collectivity. A further decision by the same court in 2013, recognizing their customary rights over forested areas, has been considered a milestone for the advancement of the recognition of indigenous peoples' rights in the country (see more on this in chapter 3 below) (AIPP 2015b). Provisions concerning these peoples are found in various pieces of legislation, including the Basic Agrarian Law and the Forestry Act, but a comprehensive bill on the recognition and protection of indigenous peoples' rights has been pending in the Parliament since 2011 (Dhir 2015).

A different approach is followed by those countries that, after independence, were particularly concerned about building national unity and securing their territorial integrity, with the result that their constitutions do not confer a special status on any of the ethnic groups forming their population but, rather, insist on the principle of unity and equality between all ethnic groups (UN 2003, Kingsbury 1998). In these countries, there is recurrent reference to the category of "ethnic minorities", rather than tribal peoples or communities. The focus on equality between all ethnic groups has been pursued, in many cases, at the expense of respect for the cultural identity and integrity of minority groups.

The Constitution of the Lao People's Democratic Republic, for example, affirms the "multi-ethnic" nature of the State and recognizes that all ethnic groups have the right to protect, preserve and promote their customs and cultures, without discrimination. The State is, therefore, called upon to promote equality among all ethnic groups and, to this end, to implement every measure needed gradually to develop and upgrade the social and economic levels of all ethnic groups (art. 8). To date, 49 ethnic groups have been officially recognized.

A growing awareness of the ethnic and geographical dimensions of the country's poverty profile has triggered a particular focus on ethnic minorities in the mountainous regions under the national social and economic development plans (OECD 2013, AIPP 2015c). At the same time, however, the design and implementation of the related measures proceed, reportedly, without consideration or respect for their identities and traditional lifestyles, including by means of forced resettlement programmes (see further details in chapter 4 below) (IFAD 2012b).

The Ethnic Minority Policy²⁰ provides the overall framework for the Government's action to improve the living conditions of ethnic minorities, focusing on improving access to services and eradicating discrimination, whereas the Ethnic Minority Committee under the National Assembly

19 The Alliance of Indigenous Peoples of the Archipelago (AMAN – the indigenous peoples' organization of Indonesia) uses the term "*masyarakat adat*" to refer to the indigenous peoples of Indonesia (AIPP 2015b).

20 1992 Resolution of the Party Central Organization concerning Ethnic Minority Affairs in the New Era (Erni 2012).

has been tasked with drafting and advising on proposed legislation concerning ethnic minorities and overseeing the implementation of development plans (Erni 2008, IFAD 2012b).

Box 2. Cultural diversity

Respect for indigenous peoples' distinct identities and cultural integrity is one of the cornerstones of the modern international legal regime on indigenous peoples' rights, as enshrined in Convention No. 169 and UNDRIP.

Culture is a living process, historical, dynamic and evolving. It encompasses all manifestations of human existence, including, among other elements, ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, methods of production or technology, traditional activities, such as fishing or hunting, natural and human-caused environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express the meaning they give to their existence, and build their worldview representing their encounter with the external forces affecting their lives (CESCR 2009, CCPR 1994).

The 2030 Agenda for Sustainable Development recognizes cultural diversity as a crucial enabler of sustainable development (para. 36).

Following an analogous approach, the Constitution of Viet Nam proclaims the “multinational” character of the State and enshrines the principle of equality between all the 54 ethnic groups constituting its population. It recognizes the right of every ethnic group to use its own language and system of writing, to preserve its national identity and to promote its customs, habits, traditions and culture, and places upon the State the obligation to provide the conditions for the development of all ethnic minorities (art. 5). The Government has adopted a number of specific programmes targeting ethnic minorities in order to bridge existing social and economic gaps between them and the rest of the population. It has also established two dedicated bodies to deal with ethnic minority issues, namely the National Assembly’s Council on Ethnic Minorities and the ministerial Committee for Ethnic Minority Affairs (ILO 2015a). The policies adopted have, however, been seen to be aimed at integrating ethnic minorities into mainstream society rather than enabling them to strengthen their own institutions (see further details in chapter 4 below) (IFAD 2012c).

As far as Thailand is concerned, the situation is different, as neither the Constitution nor the legislation refers to indigenous peoples or ethnic minorities, as do those of neighbouring countries. The 2007 Constitution referred instead to “traditional communities”. The new Constitution adopted in 2016 contains a reference to “Thai people of different ethnic groups” and recognizes their right “to live voluntarily and peacefully without disturbances in the society according to their culture, custom and traditional ways of life, insofar as such livelihood is not contrary to public order or good morals of people, or does not harm the security of the State or health” (art. 70).²¹

²¹ Unofficial translation by the International Institute for Democracy and Electoral Assistance (IDEA) (Australia), International Commission of Jurists (Thailand) and the Office of the United Nations Resident Coordinator in Thailand (Thailand), June 2016.

As a result of the engagement of indigenous peoples' organizations in the constitutional drafting process, an earlier draft of the Constitution explicitly recognized indigenous peoples, but this reference was later dropped (IWGIA 2016). Since the 1950s, a number of policies and programmes targeting what are referred to as "hill tribes" have been adopted which, while aimed at improving their living conditions, have also been directed at integrating indigenous peoples into Thai society, including by eradicating their shifting cultivation and resettling them in the lowlands (Erni 2008). Nine so-called "hill tribes" are officially recognized, and this ignores the indigenous groups living in the southern and north-eastern districts of the country (IWGIA 2016). In 2010, the Government adopted two dedicated resolutions to restore the livelihoods of the Chao Ley and Karen peoples (see further details in chapter 3 below). In 2016, the Government noted the recommendation made to Thailand in the framework of the universal periodic review that it ratify Convention No. 169 (UN 2016b).



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The Constitution of Cambodia refers to "Khmer citizens", without making distinctions of any sort. The expression has, however, been interpreted as covering the whole population of the country without denying the existence of different ethnic groups within it (Erni 2009).²² In fact, "indigenous (ethnic minority) communities" (*sahakom chuncheat daoem pheak tech*) have been recognized in the Land Law of 2001, which provides for the recognition of communal land rights for indigenous communities, and the Forest Law of 2002. According to article 23 of the Land Law, an indigenous community is "a group of persons whose members show ethnic, social, cultural, and economic uniqueness, conduct their ways of life according to their traditions, and cultivate the lands that they occupy in accordance with their traditional rules of collective use" (art. 23).

In 2001, the Department of Ethnic Minorities Development was created under the Ministry of Rural Development, with the task of designing development strategies and conducting related research concerning those groups (Lasimbang, Luithui 2007). More recently, the 2009 National Policy on the Development of Indigenous Peoples, which has replaced the older policies on ethnic minority development in North-Eastern Cambodia and the development of "highland peoples", refers to "*chuncheat daoem pheak*

²² Article 31.2 of the Constitution reads as follows: "Khmer citizens shall be equal before the law, enjoying the same rights and freedom and obligations regardless of race, color, sex, language, religious belief, political tendency, national origin, social status, wealth or other status. The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with the law".

tech”, literally indigenous ethnic nationalities or minorities, which has been considered by some as equivalent to the international concept of “indigenous peoples” (IFAD 2012d, Lasimbang, Luithui 2007, Erni 2008). The National Policy recognizes 24 distinct indigenous groups living in 15 provinces.

The Philippines has recognized the rights of indigenous peoples in a comprehensive manner, with the adoption in 1997 of the Indigenous Peoples Rights Act. Prior to that, the Constitution had already recognized “indigenous cultural communities”. Article XII, section 5, of the Constitution recognizes the right of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being.

As for Nepal, the ratification by the country of Convention No. 169 in 2007 has been regarded as one of the most strategic and visible outcomes of the indigenous peoples’ movement so far (Roy 2016, p. 5). In 1997, the Government recognized for the first time the concept of “indigenous nationalities”, or Adivasi-Janajati (ILO 2009). The National Foundation for the Development of Indigenous Nationalities Act, 2002 provides a definition of “indigenous nationalities” as those “ethnic groups or communities that have their own mother tongue and traditional customs, distinct cultural identity, distinct social structure and written or oral history of their own” (UN 2009, para. 14). Under this Act, 59 indigenous nationalities have been recognized, although the list has been contested and a high-level task force established to revise the schedule of Adivasi-Janajati (UN 2009, Roy 2016, CEACR 2016a).

Indigenous nationalities have now also been recognized at the constitutional level. The 2015 Constitution states that Nepal is a multilingual, multireligious and multicultural nation (art. 3) and provides for affirmative action in favour of historically marginalized or disadvantaged groups, notably indigenous peoples, including the inclusion of indigenous representatives in legislative bodies and the establishment of an Adivasi-Janajati Commission (Dhir 2015). As observed by Roy, the Constitution does not, however, acknowledge the historical context of exclusion, discrimination and marginalization suffered by the Adivasi-Janajati²³ and omits to refer to their right to maintain, develop and preserve their political, economic and social institutions and their right to lands and natural resources (Roy 2016).

2.3. Conclusions

While a broader acceptance and shared understanding of the concept of indigenous peoples across the Asian region are yet to emerge, many countries have in fact moved ahead towards identifying and recognizing indigenous peoples among their national populations. This action has often been motivated by their respect for and positive appraisal of ethnic diversity, their desire to remedy historical injustices, and concerns for social cohesion and inclusiveness. The overall picture, however, remains varied.

²³ The preamble to the Constitution makes generic reference to the discrimination and oppression perpetrated upon the people of Nepal (Roy 2016, p. 16).

Nepal, the Philippines and, to some extent, Cambodia stand out in the region, pursuing approaches reflective of a contemporary understanding of the concept of indigenous peoples that is based on respect for cultural integrity and recognition of their collective identity and attachment to a territory. India has put in place an extensive legal and policy framework targeting its scheduled tribes, while Bangladesh has also put in place a number of important legal measures seeking to improve the situation and rights of the groups concerned. In other countries, the courts and national human rights commissions have started to play a proactive role in recognizing and protecting the rights of indigenous peoples, as is the case in Indonesia and Malaysia.

Nevertheless, numerous policy and protection gaps remain in all the countries examined and the effective implementation of existing measures is a common challenge. Addressing these gaps and challenges will be essential for ensuring that indigenous peoples – which are among the most marginalized and disadvantaged segments of national populations in Asia – do not fall further behind and that they benefit from development processes that are respectful of their rights, cultures and aspirations. While the provisions guiding the identification of the concerned peoples set out in Convention No. 169 are formulated in a flexible way, accommodating local designations and terminology, shortcomings in identifying and recognizing indigenous peoples place serious limitations on the full promotion and protection of their rights through appropriate coherent and coordinated legal and policy frameworks.

In this context, there is room for building a stronger regional and national ownership and common understanding of the concept of indigenous peoples, the scope and content of related international standards, and the added value of targeted attention to indigenous peoples and their rights when striving for inclusive development and environmental sustainability. Awareness raising, participatory research and assessments and dialogue among all stakeholders concerned, within and across countries in the region, can assist in moving these debates and policy development forward and preparing the ground for new initiatives to strengthen national frameworks for indigenous peoples' rights and development. Such dialogue should be inclusive and should bring together relevant government bodies, indigenous peoples, workers and employers organizations, national human rights institutions and other relevant stakeholders. Future policy dialogue and interventions should more clearly address the gender issues and the rights of indigenous women and indigenous persons with disabilities.

3. Consultation and participation

3.1. Exploring existing approaches to consultation and participation

The rights of indigenous peoples to participate in decision-making and to be consulted on matters that may affect them are the cornerstones of Convention No. 169 and are also central to UNDRIP.²⁴ The countries examined for the purpose of this study display a varying degree of recognition and practical realization of these rights. This clearly mirrors the diverse forms of legal recognition of indigenous peoples, as explored in chapter 2 above.



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As will be illustrated below, experiences from the countries under review include various forms of autonomy arrangements, the establishment of advisory bodies with different scope and degree of responsibilities, positive measures – in the form of mandatory or quota systems of representation – designed to promote participation in public affairs, and specific provisions for the consultation of indigenous peoples on specific matters. Only in very few cases have specific procedures of general scope for the participation and consultation of indigenous peoples been established or envisaged. These experiences are often situated in an overall context of limited space for public participation, either because of general restrictions on civil and political liberties (UN 2016c), or because of predominant top-down models of decision-making.

²⁴ For more detailed information on consultation and participation under Convention No. 169, see ILO 2013.

Box 3. Rights of indigenous peoples to consultation and participation

Convention No. 169 and UNDRIP recognize the rights of indigenous peoples to consultation and participation. Consultations with indigenous peoples should take place with regard to measures that may affect them directly, including development projects. The aim of consultations is achieving agreement or consent.

Convention No. 169 provides that governments shall consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly. The consultations shall be undertaken in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures (Art. 6).

According to Convention No. 169, States shall establish means by which indigenous peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making, in elective institutions and administrative and other bodies responsible for policies and programmes which concern them (Art. 6.1 (b)). States shall also establish means for the full development of indigenous peoples' own institutions and initiatives (Art. 6.1 (c)).

UNDRIP affirms that States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures which may affect them (art. 19). It also states that indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions (art. 18).

Countries such as Nepal and the Philippines that have officially recognized indigenous peoples, provide for specific procedures to ensure the participation and consultation of these peoples. The newly adopted Constitution of Nepal stipulates that special arrangements have to be made to ensure the participation of indigenous peoples in decision-making concerning them (art. 51 (j)). It also provides for the reservation of seats in legislative bodies and other offices, including the village development committees, and provides for the establishment of an Adivasi-Janajati Commission (CEACR 2016a).²⁵ The Commission, whose members are appointed by the President, is entrusted with the tasks, among others, of studying the overall situation of indigenous peoples and formulating recommendations with regard to areas where policy, legal and institutional reforms may be needed; formulating national policies and programmes for the development of indigenous peoples and eradication of discrimination; and monitoring the implementation of relevant laws (CEACR 2016a).

In the Philippines, pursuant to the Indigenous Peoples Rights Act, a similar body has been created, namely the National Commission on Indigenous Peoples, an independent body under the Office of the President composed of commissioners belonging to indigenous peoples. The Commission, as stated in the Act, is the primary government agency responsible for the formulation and implementation of policies, plans and programmes to promote and protect the rights and well-being of the indigenous cultural communities and indigenous peoples and the recognition of their ancestral domains, together with the rights thereto (section 38). The Act also provides for the mandatory representation of indigenous peoples in policy-making bodies and other local legislative councils (section 16).

When it comes to the actual implementation of the provision, however, it has been observed that the appointed representatives are often not chosen by indigenous peoples themselves and are, rather, selected on the basis of favour found with the local government authorities (AIPP 2015d). At the general level, the Indigenous Peoples Rights Act recognizes the right of indigenous peoples to self-governance and self-determination (section 13), provides for the support of autonomous regions (section 14) and recognizes indigenous peoples' right to participate in decision-making (section 16). Furthermore, the Act provides for the specific consultation of indigenous peoples on matters concerning them, requiring their free, prior and informed consent prior to the granting of any licence, lease or permit for the exploitation of natural resources affecting their interests or their ancestral domains (sections 46 and 59), relocation (section 7) and access to biological and genetic resources and indigenous peoples' traditional knowledge, among other matters.²⁶ In 2012, the National Commission on Indigenous Peoples adopted revised guidelines on free, prior and informed consent and related processes.

In Bangladesh, the Chittagong Hill Tracts Accord of 1997 has sought to strengthen the self-government system of the region. It has resulted in the adoption of various laws, including the 1998 CHR Regional Council Act, the 1998 Hill District Council (Amendment) Act, the 2000 Chittagong Hill Tracts Land Disputes Resolution Commission Act and the 2003 Chittagong Hill Tracts Regulation (Amendment) Act, and the creation of three new bodies, namely, a regional council for the Chittagong Hill Tracts with a two-third indigenous majority and an indigenous chair, which is mandated, among other tasks, to supervise the functions of the district and other local government bodies; a separate Ministry of Chittagong Hill Tracts Affairs, which is tasked with dealing with all affairs concerning the Chittagong Hill Tracts; and the Commission on Land, seven of whose nine members are indigenous, with the function of dealing with land-related disputes (Roy 2009). With regard more generally to the participation of indigenous peoples both from the Chittagong Hill Tracts and the plains, it is worth mentioning the establishment in 2010 of the Parliamentary Caucus on Indigenous Peoples (see box 4 below).

²⁶ A study conducted by the Philippines Task Force for Indigenous Peoples' Rights on free, prior and informed consent has identified a number of weaknesses in the current application of the provisions of the Indigenous Peoples Rights Act concerning consultation and such consent, consisting notably in disrespect for indigenous peoples' customary law and values, various forms of manipulations of the process and bribery of the community's leaders (AIPP 2015d).

Box 4. Bangladesh's Parliamentary Caucus on Indigenous Peoples

The Parliamentary Caucus was established in 2010 with the aim of fostering the realization of the rights of indigenous peoples in the country, combining advocacy within and outside the Parliament and consultations with indigenous peoples. Its work is aligned with the five-year plan (2011–2016), with the theme “Accelerating growth and reducing poverty”, which emphasises the need to ensure these peoples’ rights and preserve their cultural identity.

It is composed of members of Parliament of different political parties who either belong to indigenous communities or have a long-standing record of support for the recognition of indigenous peoples’ rights. At present, the Caucus counts 36 members, of whom only four are from indigenous communities.

From 2012 to 2014, the Caucus held consultations with indigenous peoples, local government representatives, traditional leaders, parliamentarians and legal experts with a view to drafting a comprehensive law on the promotion and protection of indigenous peoples’ rights. The bill has been finalized and has been submitted to Parliament in December 2016, and is currently awaiting consideration.

Members of the Caucus are elected members of the Parliament, and not themselves representatives of indigenous peoples. This condition has, sometimes, given rise to conflicts of interest between the political agendas of their respective parties and indigenous peoples’ agendas (Tripura 2015).

Self-government arrangements are also found in India. As noted earlier, the Constitution of India includes various provisions for the so-called scheduled areas, tribal areas and tribal states (art. 244, schedules V and VI). It also grants special protection to the states of Nagaland and Mizoram (arts 371A and 371G). Nevertheless, these provisions do not cover the entire indigenous population of the country. Moreover, it has been noted that, in practice, implementation of these provisions has not been without difficulties stemming from unresolved contradictions between the multiple state structures, on the one hand, and traditional institutions, on the other, at the village and community levels (ILO, AIPP 2010).

Where participation in public affairs is concerned, the Constitution of India provides for reserved seats for scheduled tribes in the elective bodies at federal, national and local levels, to ensure their representation proportionally to their population. With regard to the effectiveness of measures of this kind, however, it has been underscored that, where lower structures are in conflict or competition with the traditional structures, the scheduled tribes’ representatives become part of the dominant structures, effectively weakening their representative character (ILO/AIPP 2010, p. 75). Provisions for the consultation of concerned indigenous peoples are found in sectoral legislation, such as the 2006 Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act (hereinafter referred to as the Forest Rights Act), which requires consent from the village assembly (*gram sabhas*) for any handover of forest land, and the 2013 Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, whose purpose is to ensure a participative, informed and transparent process for land acquisition (preamble).²⁷ These laws will be discussed further in the following chapters.

The Federal Constitution of Malaysia provides that persons who “are representative of racial minorities or are capable of representing the interests of aborigines” may be appointed by the

²⁷ India has also established various bodies with diverse responsibilities concerning scheduled tribes’ affairs. These include the Ministry of Tribal Affairs, created in 1999, the National Commission for Scheduled Tribes, established in 2004, and the Committee on the Welfare of Scheduled Castes and Scheduled Tribes, whose creation dates back to 1968, among others. For more details, see ILO, AIPP 2010.

King as members of the Malaysian Senate (art. 45.2). Similar provisions are incorporated in the constitutions of Sabah and Sarawak, regarding the membership of the state legislative assemblies. To date, only an Orang Asli representative has been appointed as senator; no representatives of the groups categorized as “natives” have been appointed either at federal or state level (JOAS 2015).

To a certain extent, forms of self-government may be found at local level. In Sabah, for example, the 1951 Rural Administration Ordinance institutionalized the native chiefs and headmen as part of the administration at village level. The same task was performed in Sarawak by the 2004 Community Chiefs and Headmen Ordinance. These are state-appointed representatives who, in many cases, have replaced the traditional leaders appointed by the community’s members, eroding the traditional governance systems of the peoples concerned and reducing, also, the scope of local self-governance (JOAS 2015). As for the aborigines of Peninsular Malaysia, the paternalistic approach underpinning the 1945 Aboriginal Peoples Act means that there are no provisions for the participation and the consultation of the peoples concerned (AIPP 2015a).

Concerning Indonesia, Act 32/2004 on Regional Government regulates administration at local level. This Act builds on previous legislation, namely Act 22/99 on Regional Government, which had restored traditional village institutions. The Act recognizes the existence of traditional villages of indigenous peoples and provides that customary law may be applied in the election of village heads (art. 202 (3) of Act 32/2004) (ILO 2012a). The Act, however, reiterates the constitutional provision in article 18 that subordinates respect for the customary rights and identity of the customary law societies to “society’s development” (see chapter 1 above). In addition, mandatory consultation with “affected communities” is contemplated under the 2012 Law No. 2 on Acquisition of Land for Development for Public Purposes, and related Presidential Regulation No. 71/2012 (UN 2013c).

Cambodia does not have any specific legal provisions concerning the participation and the consultation of indigenous peoples. Nevertheless, the 2009 National Policy on the Development of Indigenous Peoples calls upon relevant ministries to encourage indigenous peoples’ participation in the development, monitoring and evaluation of policies at all levels and recognizes their right to decide on their own economic, social, and cultural development (chapter 1, General Policy, clause 9).

In addition, the 2002 Forest Law provides for “full public participation” in all government decisions that may affect local communities, their livelihoods and forest resources (art. 4). No specific procedure has so far been established, however, to ensure that indigenous peoples are consulted and participate in decision-making that affects them (ILO 2015b). Furthermore, the Land Law recognizes indigenous peoples’ traditional authorities or leaders and entrusts them with the task of managing the use of communal lands and dealing with the administrative authorities in this matter (art. 26.2). In certain communities this position has, however, been taken over by government-appointed persons (ILO 2015b).

In the Lao People’s Democratic Republic, the Committee for Ethnic Minorities of the National Assembly is responsible for ethnic minority affairs throughout the country, oversees the implementation of social and economic development plans and makes recommendations on draft legislation concerning ethnic minorities, among other tasks (IFAD 2012b). A similar institutional

arrangement is found also in Viet Nam, where there are two dedicated bodies dealing with ethnic minority issues, namely the National Assembly's Council on Ethnic Minorities and the ministerial Committee for Ethnic Minority Affairs.



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Under the country's 2011–2020 REDD-plus action programme, the latter is entrusted with encouraging ethnic minorities' participation in REDD-plus processes. In fact, the inclusion of the Committee for Ethnic Minority Affairs in the REDD-plus steering committee, together with the creation of an institutional architecture open to civil society participation, including by indigenous peoples' organizations, has been hailed as an unprecedented sign of Viet Nam's commitment to participatory approaches. Thus far, however, the mechanisms established have failed to ensure the full participation of indigenous peoples (Errico 2016).

More generally, the new Land Law of 2013 has provided for “consultation with the people” on forest and land-use planning (art. 43). The Grassroots Democracy regulations also contemplate citizens’ involvement in decision-making but implementation thus far has been weak (Pham et al. 2015). As for Thailand, the recently adopted Constitution provides for consultation with and participation of people with regard to the national strategy for sustainable development (section 65).

3.2. Conclusions

Most countries reviewed in the study have tackled the issue of local governance institutions relating to indigenous peoples, although the scope and approach of existing arrangements vary considerably. In some countries, the traditional institutions of indigenous peoples are recognized by law and given specific roles or responsibilities within the state structure, at the local level. Sometimes these responsibilities are specific to certain matters, such as managing communal lands (as for example in Cambodia), while in other cases indigenous villages as such are recognized as local government units (for example in Indonesia).

In addition, a number of countries have broader self-governing or autonomy arrangements at the local or regional level (such as in Bangladesh, India, Malaysia or the Philippines). In some countries traditional indigenous institutions and local state institutions, such as local or municipal councils, coexist (for example in Cambodia and India). Attention has been drawn to contradictions that exist between traditional institutions and formal structures which end up weakening, in practice, existing self-government arrangements.

Another type of measure used in the region to promote the participation of indigenous peoples in public affairs is the use of quotas for indigenous members in elective bodies, such as national parliaments or elective bodies at the provincial or local levels, which is the case, for example, in India, Malaysia and Nepal. In addition, several countries have established dedicated national commissions responsible for indigenous peoples’ affairs, the membership of which includes indigenous peoples themselves (India and the Philippines). Thus, in Nepal, the establishment of such a commission is envisaged by the country’s new Constitution of 2015, although it has not yet been set up. The representativeness of indigenous members in State-established bodies at national or local levels has sometimes been questioned, because of the selection procedures or owing to conflicts of interest with political agendas.

While measures to ensure the participation of indigenous peoples through representation in elective bodies and in commissions responsible for indigenous peoples’ affairs constitutes a significant measure, they cannot, however, take the place of dedicated procedures for consultations between the State and indigenous peoples on matters that may directly affect these peoples, through their own representative institutions. Such matters may be legislative or administrative measures, including decisions concerning development projects with impacts on indigenous peoples.

Some of the countries covered by the study have legal provisions for public consultation (for example Cambodia, Thailand and Viet Nam), which are unlikely to provide sufficient attention and guarantees relating to the rights and interests of indigenous peoples. Others have provisions

for dedicated consultations with indigenous peoples regarding specific issues, for example the consultation requirement contained in India's Forest Rights Act. In the Philippines, the Indigenous Peoples Rights Act provides that the Government may not issue licences or permits for the exploitation of natural resources unless a consultation process in line with the Act has taken place, and the National Commission on Indigenous Peoples issues a certification in this regard. While such examples stand out positively, the overall picture in the region is characterized largely by a lack, in most countries, of dedicated mechanisms and procedures for consultations with indigenous peoples as envisaged in international standards.

At the same time, there is a growing realization that, when poverty reduction efforts lack the participation of the concerned people, this has led to ill-suited solutions, and this realization may open spaces for adjusting current approaches and practices. The recent attention to indigenous peoples embodied in global policy agendas and policies of major development stakeholders could further contribute to this trend.

Nevertheless, in order to achieve a paradigm shift, considerable attention by policymakers to dedicated mechanisms for consultation will be needed in order to make progress on this issue. This is especially important in view of the current very low levels of participation of indigenous peoples, which is both a root cause and consequence of the situation of marginalization in which their communities tend to find themselves. Addressing lack of participation has a key role to play in preventing conflict and promoting social cohesion, dialogue and consensus. Future efforts to enhance indigenous peoples' participation will require a specific focus on ensuring equal participation of indigenous women.

4. Land and natural resources

4.1. Significance of land and natural resources for indigenous peoples in Asia

The vast majority of indigenous peoples in Asia depend on access to land and natural resources for their livelihood. The indigenous peoples of the Philippines, for example, are mainly engaged in a mix of activities including shifting cultivation in the highland regions, sedentary cultivation of rice, corn and vegetables, hunting and gathering in the forests, livestock raising, fishing along the coastal areas and rivers and producing and trading local handicrafts (IFAD 2012e).



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In the Lao People's Democratic Republic, many indigenous communities live in forested areas and forest resources thus represent an important component of their livelihood (AIPP 2015c). Likewise, it has been estimated that, in Cambodia, forest resources and forest-based activities such as the collection and harvesting of non-timber forest products, provide between 20 and 50 per cent of the income of forest-dependent communities (Savajol, Chan, Yep 2012). In Viet Nam too, non-timber forest products play a key role in these peoples' livelihood as a source of food, medicines, fodder and building materials. They represent 15–25 per cent of household income in forest areas (Nguyen 2006).

In India, according to 2011 statistics, among workers from scheduled tribes 34.5 per cent are cultivators and 44.5 per cent agricultural labourers (Dhir 2015). In Bangladesh, it is estimated that 40,000 indigenous families are engaged in shifting cultivation in the Chittagong Hill Tracts (AIPP 2010). Besides playing a crucial role in the livelihood of indigenous peoples, land and natural resources also represent an integral part of these peoples' cultural identity and social organization (AIPP 2010, ILO 2009). Their special attachment to their traditional territories is, in fact, a distinguishing feature of indigenous peoples.

As articulated in Convention No. 169, the territories that indigenous peoples occupy and otherwise use have a special importance for their cultures and spiritual values. At the same time, their traditional activities, including shifting cultivation, hunting, gathering and fishing, are important factors in the maintenance of their cultures and their economies and development (arts. 13 and 23).

Box 5. Rights of indigenous peoples to land and natural resources

Convention No. 169 and UNDRIP recognize the special relationships that indigenous peoples have with their territories and contain specific provisions concerning indigenous peoples' rights to lands and natural resources.

Part II of Convention No. 169 on land covers aspects related to: recognition of rights of ownership, possession and use of lands (art. 14.1); special attention to the situation of nomadic peoples and shifting cultivators (art. 14.1); adoption of measures to identify these lands and establishment of procedures to resolve land claims (arts. 14.2 and 14.3); recognition of rights to natural resources (art. 15.1); relocation (art. 16); transmission of land rights (art. 17); prevention and punishment of unauthorised intrusion upon, or use of, the lands of indigenous peoples (art. 18); and agrarian reforms (art. 19).

UNDRIP includes specific provisions on, among other aspects: relocation (art. 10); recognition of rights to own, use, develop and control lands and natural resources (art. 26); establishment of a process to recognize and adjudicate these rights (art. 27); redress, including restitution or compensation (art. 28); conservation and protection of the environment and the productive capacity of indigenous peoples' lands or territories and resources (art. 29).

4.2. Legal recognition of indigenous peoples' rights to land and natural resources

The legal recognition of the rights of indigenous peoples to land and natural resources is fundamental for effectively combating the land dispossession and loss of access to natural resources that indigenous peoples throughout the region experience (UN 2013a), although the extent to which indigenous peoples are affected in this way varies from country to country. Experiences and practices in the region examined in this chapter are diverse, particularly with regard to two core issues requiring attention in the context of land and natural resource rights of indigenous peoples as envisaged in international standards, namely the need for special attention to the collective relationship of indigenous peoples to the land and the important role of customary law, respectively.

Lack of recognition and protection of indigenous peoples' rights to land and natural resources causes land insecurity and vulnerability for indigenous communities but is also a major root cause of conflict. Reports indicate that conflicts have affected 75 per cent of Asia's forests in the last two decades (Patel et al. 2013). When indigenous peoples lose access to land and natural resources, indigenous women and men are bound to migrate in search of alternative sources of living or end up trapped in the informal economy, where risks of being exposed to violations of fundamental rights at work and unacceptable forms of work are more prevalent, in particular for women (see further details in chapter 4 below) (Dhir 2015).

In addition, failure to properly identify the lands and territories which indigenous peoples have traditionally occupied or used and to provide recognition and protection of related rights in the national legal system also have direct implications and consequences for the implementation in any meaningful manner of indigenous peoples' rights to consultation and participation in decision-making, particularly as regards development strategies and projects that have an impact on their rights and interests.

Cambodia is one of the States that have adopted specific provisions to deal with indigenous peoples' rights over lands and natural resources. The Cambodian Land Law recognizes indigenous peoples' collective ownership over the lands on which these peoples have established their residence and where they carry out traditional cultivation (arts 25 and 26). In this latter category, the Law explicitly includes not only the lands that are actually cultivated but also reserves necessary for shifting cultivation. Subsequent decrees and regulations have laid down the procedure to be complied with in order to claim and obtain collective communal land titles.²⁸ This procedure is particularly burdensome for indigenous peoples, because of the overall costs, the length and the complexity of the process and the problems that they experience in complying with it owing to their lack of awareness, language barriers and cultural issues (UN 2016c).

As of May 2016, only 11 communal land titles²⁹ had been issued, compared to approximately 3.5 million individual land titles issued as of August 2014 (UN 2016c, UN 2014c). Furthermore, forested lands fall within the scope of another piece of legislation, namely the 2002 Forestry Law, which recognizes traditional user rights to timber products and non-timber forest products and provides for the creation of community forests, in which communities are granted an area of the permanent forest reserve to manage and derive benefits from (Lasimbang, Luithui 2007). The need for coordination between various norms under different pieces of sectoral legislation, coupled with the fact that indigenous peoples' lands are considered to be part of the public domain until they are properly registered, serves to compound the difficulties faced in the practical application of these provisions, leaving indigenous communities particularly vulnerable to land-grabbing and pressure from third-parties (ILO 2015b).

In 2011, the Ministry of Internal Affairs and the Ministry of Land Management, Urban Planning and Construction issued inter-ministerial circular no. 001, on provisional measures to protect indigenous peoples' communal lands, designed to accord legal protection to the lands possessed by indigenous communities pending the completion of the registration procedure. In addition, in 2014 the Ministry of Land Management, Urban Planning and Construction received for the first time a budget allocation for communal land titling and a target of 10 titles per year was set in connection with the national strategic development plan for 2014–2018. The plan accords high priority to poverty reduction and sustainable social and economic development, emphasizing security of land tenure, including the protection of indigenous peoples' land rights (ILO 2015b).

²⁸ The procedure entails three main subsequent steps. They encompass, first, the recognition of the community by the Ministry of Rural Development as an indigenous community; second, the registration of the said community with the Ministry of Internal Affairs as a legal entity; and, third, the application by the registered community to the Ministry of Land Management, Urban Planning and Construction for the registration of their communal land title.

²⁹ At the same date, 118 indigenous communities had been recognized as such by the Ministry of Rural Development and 90 had been recognized as legal entities by the Ministry of Internal Affairs (UN 2016b).

Box 6. Recognition of rights to land and natural resources in the Philippines

The Indigenous Peoples Rights Act recognizes indigenous peoples' rights of ownership and possession to their ancestral domains. According to the Act (chapter III, section 7), such rights shall include:

(a) **Right of ownership** — The right to claim ownership over lands, bodies of water traditionally and actually occupied by indigenous cultural communities or indigenous peoples, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains;

(b) **Right to develop lands and natural resources** — Subject to section 56 of the Act, the right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and use of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological and environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project; and the right to effective measures by the Government to prevent any interference with, alienation and encroachment upon these rights;

(c) **Right to stay in the territories** — The right to stay in the territory and not to be removed therefrom. No indigenous cultural communities or indigenous peoples will be relocated without their free and prior informed consent, nor through any means other than eminent domain. Where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free and prior informed consent of the indigenous cultural communities or indigenous peoples concerned and, whenever possible, they shall be guaranteed the right to return to their ancestral domains, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or through appropriate procedures, indigenous cultural communities and indigenous peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the land previously occupied by them, suitable to provide for their present needs and future development. Persons thus relocated shall likewise be fully compensated for any resulting loss or injury;

(d) **Right in case of displacement** — In case displacement occurs as a result of natural catastrophe, the State shall endeavour to resettle the displaced indigenous cultural communities and indigenous peoples in suitable areas where they can have temporary life support systems, provided, that the displaced indigenous cultural communities and indigenous peoples shall have the right to return to their abandoned lands until such time that the normality and safety of such lands shall be determined; provided, further, that, should their ancestral domain cease to exist and the normality and safety of the previous settlements are not possible, displaced indigenous cultural communities and indigenous peoples shall enjoy security of tenure over lands to which they have been resettled; and provided, furthermore, that basic services and livelihood shall be provided to them to ensure that their needs are adequately addressed;

(e) **Right to regulate entry of migrants** — The right to regulate the entry of migrant settlers and organizations into the domains;

(f) **Right to safe and clean air and water** — For this purpose, the indigenous cultural communities and indigenous peoples shall have access to integrated systems for the management of their inland waters and air space;

(g) **Right to claim parts of reservations** — The right to claim parts of the ancestral domains which have been reserved for various purposes, except those reserved and intended for common public welfare and service;

(h) **Right to resolve conflicts** — the right to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof shall the complaints be submitted to amicable settlement and to the courts of justice whenever necessary.

The legal framework of the Philippines also explicitly recognizes indigenous peoples' rights to lands and natural resources. The Indigenous Peoples Rights Act recognizes indigenous peoples' collective rights of ownership and possession to their ancestral domains,³⁰ and sets up a procedure for their demarcation and titling through the issuance of certificates of ancestral domain titles.

As in the case of Cambodia, this procedure too has proved to be cumbersome for indigenous communities, owing to the overall costs, its length – the process may take up to two or three years – and the amount of documentary proof required from the claimants (AIPP 2015d). In case of conflicting interests regarding claims within ancestral domains, the Indigenous Peoples Rights Act provides that indigenous customary laws, traditions and practices should apply and any case of doubt or ambiguity in the application or interpretation of laws should be resolved in favour of the indigenous peoples.

Nevertheless, legal practitioners and judges are reportedly not inclined to refer to customary law (UN 2003). It has been observed that land insecurity is, in practice, a leading cause of instability in the areas inhabited by indigenous communities (UN 2015c). Conflicting legal provisions, such as those included in the 1995 Mining Act, with regard to the Indigenous Peoples Rights Act, also contribute to such insecurity (AIPP 2015d). Owing to the predominant Regalian doctrine in practice, indigenous peoples' lands are considered in the public domain, unless proven otherwise (IFAD 2012e). The loss of ancestral lands because of displacement following from the implementation of development projects and environmental degradation, has seriously undermined the capacity of the affected communities to survive (UN 2015c).

Another specific piece of legislation concerning indigenous peoples' rights is the Forest Rights Act, 2006 adopted in India. In this regard, it is worth recalling that approximately 70 per cent of the traditional homelands of indigenous peoples in India has historically been designated as forest and has been brought under the control of the Government since colonial time. Around 4.3 million indigenous people live inside protected areas and some of the forest areas have actually been regarded as “encroached” by indigenous peoples (IFAD 2013). Indeed, in the words of the Ministry of Environment and Forests, “rural people, especially tribals who have been living in the forests since time immemorial, were deprived of their traditional rights and livelihoods and consequently, these tribals have become encroachers in the eyes of the law” (ILO, AIPP 2010, p. 93).

The Forest Rights Act is designed precisely to address this “historical injustice” through the recognition of individual and collective rights to forest lands and resources, including water bodies and grazing areas, in favour of scheduled tribes and other traditional forest dwellers, and the granting of substantive decision-making power to the village assembly, whose consent

³⁰ Ancestral domain is defined as “all areas generally belonging to ICCs/IPs [indigenous cultural communities or indigenous peoples] comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators”.

is required, for instance, in the case of relocation (preamble, art. 4 ff.).³¹ As of 31 March 2014, some 3,742,000 claims had been filed and 1,432,000 titles distributed in accordance with the Act (CEACR 2016b).

Box 7. Recognition of forest rights in India

In 2006, the Indian Parliament passed a law specifically dealing with indigenous peoples' rights to forest lands and resources: the 2006 Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act.

The Act acknowledges that indigenous peoples' forest rights were not adequately recognized in the consolidation of State forests during the colonial period and in independent India, resulting in historical injustice to forest dwelling scheduled tribes and other traditional forest dweller. The Act recognizes a set of collective and individual forest rights in favour of scheduled tribes and other traditional forest dweller with a view to addressing the long-standing insecurity of tenurial and access rights of these people (preamble). They include the following:

- **the right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood;**
- **the right of ownership access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;**
- **other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;**
- **the right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;**
- **the right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity (art. 3).**

In addition, the 2013 Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act has established a procedure for the acquisition of land by state governments for public purposes and has provided for the participation of the affected scheduled tribes and other traditional forest dwellers in the preparation of a social impact assessment study and in decision-making concerning rehabilitation and resettlement measures (CEACR 2016b).

The special status conferred to scheduled areas in terms of self-government, which has been discussed in the previous section, would also entail the recognition of indigenous peoples' rights to their traditional resources and participation in decision-making processes concerning developmental activities. Their application is dependent on amendments to state-level *Panchayati* or local governance legislation by State legislatures. This has, in practice, hampered their implementation (ILO, AIPP 2010).

Most States have enacted legislation imposing restrictions on transfers of land from tribal to non-tribal people. Yet, land loss remains a major problem among indigenous peoples across India

³¹ It should be noted that according to national jurisprudence, the right to life enshrined in article 21 of the India's Constitution encompasses the right to livelihood and other rights of a social and economic nature, including the right to a clean environment and water (ILO, AIPP 2010).

and the single biggest cause of deprivation of their livelihood (ILO, AIPP 2010). It has been estimated that scheduled tribes represent up to 40 per cent of all people displaced between 1947 and 2000 as a result of the realization of development projects, including dams, mining and conservation projects, while they account for only 8.2 per cent of the population (IFAD 2013). Contradictions between different laws and policies concerning mining and land management, including the recent Compensatory Afforestation Fund Act, 2016, and the lack of harmonization of those with the Forest Rights Act are yet to be fully addressed (ILO, AIPP 2010).

In Nepal, the lack of reference to indigenous peoples' rights to land and natural resources in the 2015 Constitution has been regarded as one of the "most glaring omissions" (Roy 2016, p. 11). A report by the Land Reform Commission in 2010 unveiled that the rates of land ownership by the Adivasi-Janajati are low compared to the rest of the population³² and issued a number of recommendations to address the problem (CEACR 2016a).

In Bangladesh, as has been previously recalled, the Chittagong Hill Tracts Land Dispute Resolution Commission has been mandated to address land-related disputes with a view to recognizing and protecting indigenous peoples' land rights in the Chittagong Hill Tracts. In discharging its functions, the Commission is obliged to take into account the laws, customs and usages of the Chittagong Hill Tracts (Roy 2009).

Regarding the indigenous peoples of the plains, the 1950 East Bengal State Acquisition and Tenancy Act is the main piece of legislation regulating land administration in the region. It contains some provisions providing for restrictions on the transfer of land titles belonging to "aboriginal castes and tribes" to any other than aboriginals "domiciled or permanently residing in Bangladesh" which would have the potential to tackle, to certain extent, fraudulent and violent land-grabbing to the detriment of indigenous communities (Roy 2009, p. 64). These provisions are however not uniformly applied in the plains (Roy 2009).

In Malaysia, indigenous peoples' customary land rights are recognized in various laws and policies, such as the 1930 Sabah Land Ordinance and the 2010 Sabah Land Use Policy, the 1958 Sarawak Land Code, and the 1954 Aboriginal Peoples Act (JOAS 2015). Their collective rights to land and resources have also been upheld by Malaysian courts in several judgments (see box 9 below). Yet, as has been reported by the UN Special Rapporteur on the right to food, indigenous peoples continue to face obstacles in acquiring official recognition of their rights and are often confronted with challenges in accessing the sources of their livelihoods owing to encroachment on their lands and environmental degradation caused by varying developmental activities (UN 2014b).

The National Inquiry into the Land Rights of Indigenous Peoples undertaken in 2013 by the Human Rights Commission of Malaysia shed some light on the underlying causes for indigenous peoples' land tenure insecurity (SUHAKAM 2013). According to the report, successive amendments of land laws that do not recognize indigenous peoples' perspectives of land ownership and management have eroded customary rights to land and have had a bearing on administrative

³² For an overview of the situation of land ownership in Nepal and the historical processes leading to land dispossession suffered by indigenous peoples see UN 2009. As a result of land loss and other patterns of marginalization, indigenous people became, in some instances, bonded workers in private farms and wealthier households (UN 2009).



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decisions on indigenous peoples' land claims. Legislation has failed to recognize traditional forms of land occupation for the purpose of the recognition of land rights, requiring evidence primarily of cultivation and settlement and disregarding customary land uses whereby areas are maintained and preserved for activities such as foraging, hunting, or shifting cultivation.

Another crucial factor that has been identified is the lack of consultation with indigenous peoples with regard to activities that affect their territories (SUHAKAM 2013, UN 2014b). Following the report of the Human Rights Commission, the Government has established a Cabinet Committee for the Land Rights of Indigenous Peoples with the mandate to "address, monitor and implement the findings of the report" (Malaysia 2015).

A similar situation is found in Indonesia, where the lack of harmonization between statutory and customary (*adat*) law results in an overall situation of tenure insecurity for indigenous communities (UN 2013c). In fact, the lack of recognition and protection of indigenous peoples' rights to land and natural resources has been regarded as the main cause of their poverty (IFAD 2012a). Although the Basic Agrarian Law recognizes the rights derived from *adat* or customary law, in order for the right-holders to register those rights, the legislation requires the purchase of certification confirming that the claimed land is not State land. Land held under customary law can only be registered and certified once it has rendered into one of the seven private law rights recognized in the Basic Agrarian Law. Collective rights cannot be registered and this deters communities from applying collectively for land certificates (UN 2013c).

All unregistered land is considered as State land until proven otherwise. Forest land is also considered as State land and indigenous communities living in these areas have been regarded as 'illegal squatters'. Litigation of land disputes is time-consuming and often prohibitively expensive for the poor (UN 2013c). A significant development has been marked, however, by the decision of the Constitutional Court in 2013 that has recognized indigenous peoples' customary rights to forest land and has called upon the Government to adjust legislation and policies to implement them (UN 2013c) (see box 8 below).

Box 8.**Indigenous peoples' rights to land and natural resources in the decisions of national courts**

In some Asian countries, national courts are increasingly playing a critical role in advancing indigenous peoples' rights.

In Malaysia, the High Court passed a landmark decision in 1997 in the *Adong bin Kuwau v Kerajaan Negeri Johor* case, whereby it recognized the right of indigenous communities to continue to live on their lands as their ancestors had lived. In the case *Kerajaan Negeri Selango v Sagong Bin Tasi* (2002), the High Court further recognized indigenous peoples' customary title to their lands and their entitlement to compensation under the 1960 Land Acquisition Act (MLJ 2005).

More recently, in *Bato Bagi v Kerajaan Negeri Sarawak*, the Federal Court held that dispossessing indigenous peoples of their lands is not only a deprivation of property rights that are protected under article 13 of the Federal Constitution and are subject to payment of compensation; it also recognized that it infringes the right to life, as recognized in article 5 of the Constitution. In quantifying the compensation owed to the affected community, the Court indicated that native customary rights should not be evaluated purely from a monetary viewpoint, but consideration should also be given to the attachment of indigenous peoples to their land and their dependency on it (JOAS 2015).

In Indonesia, the Constitutional Court, by decision 35/PUU-X/2012 of 2013, recognized indigenous peoples' customary rights over forest lands, holding that the customary forests of indigenous peoples should not be considered as belonging to State forest areas. According to the Court, the 1999 Forestry Act, which only recognizes use rights within State forest areas in favour of indigenous communities, violated constitutional recognition of their rights. The case was filed by the Indonesian national indigenous peoples' organization Alliance of Indigenous Peoples of the Archipelago who estimated that the ruling would affect 30 per cent of Indonesia's forest estate or 40 million hectares (154,000 square miles) (Climate Change Monitoring and Information Network 2013).

Where Viet Nam is concerned, the Constitution stipulates that land belongs to the people of Viet Nam with the State managing it as its representative. The Land Law regulates the allocation, lease and recognition of land-use rights to organizations, including State agencies, households, individuals and communities, among others (arts 5 ff.). The revised Land Law of 2013 stipulates that the State shall adopt: "policies on residential land and land for community activities for ethnic minorities in conformity with their customs, practices and cultural identities [...]" and "policies to facilitate for ethnic minorities who are directly engaged in agricultural production in rural areas to have land for agricultural production" (art. 27).

Customary law is not officially recognized and many ethnic minority communities have reportedly suffered from forced relocation, confiscation of their ancestral lands in favour of industrial crops, and what is known as land-grabbing. As regards forest lands, the land inventory indicates that nearly 79 per cent of national forest land has been handed over. Solely 24 per cent of people from ethnic minorities have recognized rights on them and only two per cent of forest has been allocated to communities (McDougall 2011, Thu Thuy et al. 2012, Errico 2016).

The Lao People's Democratic Republic has an analogous legal framework concerning land rights. The revised Land Law of 2003 has emphasized the need for greater access to land and tenure security for rural households as a part of the State's efforts to reduce poverty. According to the Law, the State will allocate land-use rights to different stakeholders through temporary land-use certificates (art. 3). Under this law, in 2012 the first communal land title was issued in favour of five communities. The granting of communal land titles has also been set as an objective of

the national social and economic development plan. Furthermore, in 2007 the Prime Minister announced an indefinite moratorium on large land concessions for plantations and mining (AIPP 2015c). On the other hand, as we shall see in the next chapter, resettlement of communities to lowlands is being pursued as a strategy to provide them with access to social services such as health and education (IFAD 2012b).

In Thailand, in 2010, the Cabinet adopted a resolution on the “restoration of traditional livelihood practices and livelihood of the Karen people” and a resolution concerning the Chao Ley people, stating the right of these people to stay in their ancestral lands and continue their traditional agricultural practices (ILO 2015c, IWGIA 2016). The application of these resolutions has so far been slow, reportedly because of, among others, lack of awareness of concerned government agencies, the need for coordination across different ministries and the low budget allocated for the activities (IWGIA 2016).

More generally, the recognition of the rights of indigenous peoples to their traditional lands, especially when these are forest lands, seems to encounter considerable difficulties. In 2011, the Government passed the Regulation of the Prime Minister’s Office on the Issuance of Community Land Title Deeds which provides for the granting of community land-use permits in favour of applying communities. The adoption, in 2014, of the so-called “reforestation master plan”, aimed at combating illegal logging and deforestation, has had a severe effect on indigenous commu-



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nities, many of whom live in natural protected areas and whose land rights are not recognized (AIPP 2016). There are recurrent cases of fines and sanctions, including imprisonment, against indigenous people living in forest areas who are accused of encroachment on state-lands or illegal logging in national parks (AIPP 2016). The State has been encouraged to review relevant forestry laws in order to ensure respect for ethnic groups’ lifestyles, livelihood and culture and their participation in decision-making that affects them (CERD 2012a).

Box 9. Indigenous women's rights to land and natural resources

Indigenous women and men have distinct roles and responsibilities in the management of land and natural resources. In many indigenous societies in Asia, women are responsible for ensuring food for the family and securing nutrition, collecting firewood, wild foods and crops, maintaining seeds and harvests, collecting and using medicinal plants, fetching water and managing agricultural fields (AIPP 2015e).

Convention No. 169 stipulates that the provisions of the Convention shall be applied without discrimination to men and women members of indigenous peoples (art.3). UNDRIP further declares that States shall take measures to ensure that indigenous women enjoy the full protection and guarantees against all forms of violence and discrimination (art. 22)

The lack of recognition of the collective rights of indigenous peoples to their traditional territories adversely affects indigenous women in particular. Moreover, it has been observed that violence against indigenous girls and women cannot be separated from the wider contexts of discrimination and exclusion affecting indigenous peoples as a whole, including land dispossession (UN-Women et al. 2013).

As their communities lose access to their resources or their environment becomes polluted, women have to walk longer distances to provide for water and firewood; their daily tasks become heavier leaving less time for other productive activities, including tending the fields or making handicrafts. Traditional knowledge linked to the use of medicinal plants or traditional seeds is lost, weakening, in certain cases, the role of the women in their communities. Obligated to change their traditional livelihood strategies and abandon their occupations, they face greater difficulties than men to find alternative occupations because of lower education, language barriers, family-care responsibilities and multiple forms of discrimination (ILO 2012b).

They are also more vulnerable to exploitation, sexual abuse and trafficking. In Nepal, for example, it has been estimated that 80 per cent of trafficking victims in the country are women and girls from indigenous communities and Dalit women (Dhir 2015). In Thailand, because of the lack of birth registration and identification documents, a significant number of women and girls from ethnic minorities are vulnerable to trafficking (UN 2012d). Moreover, indigenous women are often victims of gender-based violence when their territories are militarized or are disputed, as happens, for example, in Bangladesh and the Philippines (UN Women et al. 2013, UN 2013a, AIPP 2015e, UN 2013d).

In spite of their important role in the management of their territory, indigenous women also face discrimination from within their communities. They are often excluded from decision-making at community level and, in some cases, including in Bangladesh, India, Indonesia, Malaysia and Nepal, traditional practices prevent them from inheriting and acquiring land and other goods (CEDAW 2014, AIPP 2015e, AIPP 2015f). Their major role in food production, particularly agriculture including shifting cultivation, horticulture and wet rice cultivation, is not viewed as work, because it is mainly directed at family subsistence and is not related to external markets (ILO 2012b).

Violence within their communities and families is also an issue for many indigenous women in Asia. An inter-agency report found that indigenous girls and women are at risk of violence in communities where intracommunal and intercommunal conflicts have arisen, and in those communities that conform to deeply-rooted patriarchal systems and practices that relegate women and girls to subordinate roles and positions in society. In India, for example, 47 per cent of ever-married girls and women aged between 15 and 49 belonging to scheduled tribes have experienced emotional, physical or sexual violence committed by their husband (UN Women et al. 2013).

4.3. Conclusions

As may be expected, the experiences and practices with regard to the rights to land and natural resources vary from country to country. Yet, it is significant that in all the countries reviewed the issue of indigenous or ethnic communities' access to land for local livelihood activities has been raised as an important policy issue which offers entry points for future policy debates and needed improvements.

A number of examples highlighted in the study involve interesting and noteworthy features. For instance, Cambodia and the Philippines have clearly recognized the collective attachment of indigenous peoples with the land and territories that have traditionally occupied or used and provide for the issuing of collective land titles. In both countries, however, the land titling procedures have been assessed as long and cumbersome, partially for the indigenous communities concerned and the overall implementation of the relevant laws and regulations is lagging behind. Unique in the region is India's Forest Rights Act, which, aiming at addressing historic injustice experienced by forest dwelling scheduled tribes and other traditional forest dwellers, protects both individual and collective rights to forest land (see box 7 above). In several countries, including Indonesia and Malaysia, indigenous peoples enjoy customary rights to land and natural resources, as also recognized by the courts.

Overall, however, considerable challenges and obstacles remain affecting the Asia's indigenous peoples' enjoyment of their rights to land and natural resources. Laws and regulations on the matter remain patchy and in most cases do not sufficiently recognize the collective nature of these rights. Even where these rights are legally recognized, their application is often defective, sometimes owing to a lack of coherence and coordination across applicable regulations and relevant sector policies or weak capacity of the responsible state institutions. As a result of insufficient recognition and application of land and natural resource rights, indigenous peoples in the region continue to be exposed to land tenure insecurity with all its consequences for their livelihoods. A major challenge that several countries face is the need to ensure the proper coordination between customary and state law governing land.

The lack of effective recognition and application of indigenous peoples' land rights, in combination with the absence of procedures for consultation in relation to specific development projects³³ affecting their territories or environmental conservation initiatives, and, more broadly, the lack of participation in decision-making concerning development strategies, have often led to large-scale displacement of indigenous peoples, restrictions to their access to key resources for their livelihoods, growing poverty and food insecurity, erosion of their traditional institutions and cultures, and mounting conflicts (UN 2013a, UN 2007). Though violence experienced by indigenous women within and outside their communities is multi-faceted and has various root causes, lack of access to land and natural resources and land-related conflict and displacement are factors contributing to indigenous women's exposure to violence.

³³ These projects have included hydroelectric, mining, oil and gas projects and the establishment of plantations for the production of biofuels, sugar cane, rubber or timber (UN 2013a).

5. Public policies on cultural, social and economic rights

5.1. National approaches to social, economic and cultural development

In most of the countries under review, national development and poverty reduction strategies acknowledge the disadvantageous social and economic conditions of indigenous peoples.³⁴ Few of them, however, expressly envisage specific and targeted action to address the needs of these peoples. Among them feature, for example, Bangladesh, India, Nepal and Viet Nam. Their national strategies include measures addressing a wide range of issues, including health, education, land tenure security and income-generating activities.

In all the countries, however, the overall legal and policy context related to the recognition of indigenous peoples as distinct collectivities, their participation in decision-making and the recognition and protection of their rights, including the right to define their priorities for development, affects the way these strategies are designed and implemented, how problems are identified, understood and approached, the relevance of the ‘solutions’ provided, the full assessment of their impacts and opportunity costs, and, eventually, their success and sustainability. Moreover, the availability of disaggregated data on the social and economic situation of indigenous peoples is extremely limited in Asia (Dhir 2015). Their statistical invisibility, together with their exclusion from decision-making processes affecting them, clearly influences the understanding of the issues at stake and the development of appropriate responses.

Box 10. Rights of indigenous peoples and development

Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom (UN Declaration on the Right to Development, 1986, preamble).

Convention No. 169 recognizes indigenous peoples’ right to determine their own priorities for development and to exercise control, to the extent possible, over their economic, social and cultural development. It provides for their right to participate in the formulation, implementation and evaluation of development plans and programmes which may affect them (art. 7.1). Moreover, it stipulates that the improvement of the conditions of life and work and levels of health and education of indigenous peoples, with their participation and cooperation, shall be a matter of priority in plans for the overall economic development of the areas that they inhabit (art. 7.2).

UNDRIP states that indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development (art. 23).

In the Philippines, the Indigenous Peoples Rights Act has recognized the right of indigenous peoples freely to pursue their economic, social and cultural development and determine and decide priorities for development (sections 13 and 17). In Cambodia, the National Policy on the Development of Indigenous Peoples recognizes the right of indigenous peoples to decide their economic, social and cultural development (clause 9).

³⁴ Exceptions are the national economic and social development plan of Thailand, which refers to the broad category of “local communities”, and Indonesia’s mid-term development plan, which includes broad categories of “poor communities” and “marginal groups” (Dhir 2015).

The social and economic disparities existing between indigenous peoples and the other segments of the national population in Asian countries have been ascribed to the geographical remoteness of their communities. Indeed, indigenous peoples in the countries examined for this report live predominantly on the margins of the State, often, but not exclusively, in remote mountainous regions (Erni 2014).³⁵ Thus the Lao People's Democratic Republic, for example, has implemented a policy of relocation which aims at clustering and settling ethnic minority communities of the mountainous areas in lowland villages with better access to public services and infrastructure. This has resulted in the uprooting of communities that had to adopt new lifestyles and livelihoods, besides disregarding the cultural ties that these communities may have had to their lands (CERD 2012b).

Generally, indigenous peoples' organizations have underscored the deterioration of indicators related to poverty, malnutrition, health and mortality rates in cases where communities have been relocated (UN 2013a). In fact, it has been demonstrated that geographical remoteness alone would not explain the persisting social and economic gaps.

In Viet Nam, various studies have concluded that the social and cultural remoteness of ethnic minorities, discrimination, language barriers and historical mistrust, along with prejudices and misconceptions about their culture and practices, all contribute to social and economic disparities between the majority and minority groups. Top-down development approaches with little or no participation of ethnic minorities and a lack of consideration of their traditional knowledge and practices have, in most cases, resulted in the design of ill-suited development plans not responding to the real needs of the people concerned (Errico 2016).

A study conducted by the World Bank in the Lao People's Democratic Republic has likewise concluded that national policies are unlikely to be broadly successful because they promote a development approach that is not tailored to each ethnic group's specific needs (IFAD 2012b). In Malaysia too it has been observed that the disproportionate representation of indigenous peoples among the poorest segments of the population, notwithstanding the numerous positive measures adopted since the 1990s, when the National Development Policy acknowledged the need for specific attention to these groups, is the result of various factors that include the lack of understanding and consultation with indigenous communities about their needs and aspirations (JOAS 2015).

In general, as observed by the UN Special Rapporteur on the rights of indigenous peoples, the disproportionate representation of indigenous peoples in Asia among the region's poor is attributable to historical and contemporary alienation of their lands and resources, inadequate participation in decision-making related to policy and legislation, and poorly designed or targeted government programmes implemented against a backdrop of structurally embedded centuries-old discrimination (UN 2013a, para. 26).

Negative prejudices and stereotypes about indigenous peoples and their practices still exist in these countries and inform the assimilationist and top-down approaches predominant in some of them.³⁶ In Thailand, negative stereotypes are reportedly conveyed by the media (CERD 2012a). In

³⁵ It has been argued that this stems from historical processes of defence against external aggressions and also displacement and marginalization by third parties (Erni 2014).

³⁶ As illustrated in chapter 1 above, some States reviewed for this study, such as Indonesia and Malaysia, actually enshrine this approach in their constitutions.

Viet Nam, the enormous efforts deployed to address the social and economic gaps existing within the society, with the adoption of more than 163 specific policies and programmes concerning ethnic minorities (ILO 2015a), are accompanied by the adoption of measures aimed at phasing out certain traditional practices that are viewed as obsolete and contrary to the objective of the social and economic development of the country (CESCR 2014, CRC 2012a). In India, it has been noted that mainstream media rarely report on Adivasi issues but, when they do, most coverage falls into three categories, namely paternalistic welfare stories on deprivation and poverty; stories of atrocities against them and stereotyped descriptions of the so-called “exotic” cultures and social norms of these communities (ILO, AIPP 2010, p. 28).

5.2. Employment and occupation

As recalled in the previous chapter, the vast majority of indigenous peoples in Asia depend on access to land and natural resources for their livelihood. It has been estimated that traditional occupations would account for 90 per cent of indigenous peoples’ livelihood in Cambodia, 80 per cent in Malaysia, 70 per cent in Thailand and 50 per cent in the Philippines (AIPP 2010). ILO CEACR has noted that, whether they are hunter-gatherers, forest dwellers, workers in the informal economy or formally employed, including in the public service, indigenous peoples continue to face high levels of discrimination due to persistent prejudices and negative stereotypes, and that their traditional occupations are often disregarded as outdated or unproductive (CEACR 2012, para. 767).³⁷

In Asia, indigenous peoples’ traditional occupations include, among others, farming, livestock-raising, fishing, hunting and gathering, production of handicrafts and food items, and small-scale mining. Agriculture, encompassing both sedentary agriculture in rice fields and vegetable gardens and shifting cultivation, represents the main occupation. It is practised mostly for consumption and subsistence, but crops are also being increasingly produced for the market in order to ensure cash income for families.

Livestock-raising also responds to the need for a source of cash in case of emergencies, besides providing the family with a source of protein in their diet, draught animal power in the fields and animals for the performance of traditional rituals (AIPP 2010). For indigenous peoples living near rivers, lakes, seas and other water bodies, fishing is a fundamental occupation, just as the hunting of wild animals and gathering of wild vegetables, fruits, herbal medicines,³⁸ honey and other non-timber products, are the main components of the livelihood of indigenous peoples living in forest areas (AIPP 2010).

³⁷ Men and women from indigenous peoples in Asia increasingly seek income from wage work, casual and seasonal, through work in farms, plantations, mines, construction sites, informal enterprises or as street vendors and domestic workers. Those who find employment tend to receive lower wages, have weaker contract status and higher likelihood of losing their jobs (ILO 2015d). As noted above, as a result of land dispossession and restrictions on access to natural resources, many indigenous peoples in search of alternative sources of living have to resort to labour migration or end up trapped in the informal economy where risks of being exposed to violations of fundamental rights at work and unacceptable forms of work are more prevalent.

³⁸ Some indigenous persons earn their living as traditional specialists in healing. In some countries, such as Malaysia, concerns have been raised that the requirements for registration, licensing fees and other prerequisites under the legislation on complementary medicine may discriminate against indigenous peoples’ traditional healers (AIPP 2010, JOAS 2015).



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Land dispossession and loss of access to natural resources have a significant impact on indigenous peoples' livelihoods, resulting in growing poverty and food insecurity, among others. The previous chapter reviewed the measures aimed at recognizing indigenous peoples' rights to land and natural resources which have been adopted by the States under consideration. As previously noted, land tenure security and access to natural resources are also receiving particular attention in the framework of national strategies for development and poverty reduction.

Even when land security is ensured, however, a number of other factors affect the capacity of indigenous peoples to practise their occupations. These include the prohibition of certain practices, such as shifting cultivation, the lack of access to markets and poor rural infrastructure, low prices of agricultural products, absence or inadequateness of training and skills development programmes, the need for natural disaster preparedness and management, the impact of climate change and related mitigation and adaptation measures, and the lack of participation in the formulation of development plans and climate change responses (AIPP 2010).

It has been observed that, despite their importance, wild foods are rarely taken into account in the official statistics on economic values of natural resources and, consequently, are not considered adequately in development plans (Savajol et al. 2012). CEACR has also highlighted the essential need to recognize the ownership and possession of the lands that indigenous peoples traditionally occupy and their access to their communal lands and natural resources for traditional activities and stressed that access to credit, marketing facilities, agricultural extension and skills training facilities should also be provided on an equal footing with other parts of the population (CEACR 2012, para. 768).

On the occasion of a regional workshop to reflect on indigenous peoples' traditional livelihoods, indigenous peoples' organizations themselves identified a number of key recommendations aimed at strengthening their livelihoods, including: recognizing rights to land and natural resources;

ensuring the intergenerational transfer of good practices of traditional livelihoods and sharing of lessons learned with the wider population; recognizing and supporting traditional livelihood practices; protecting rotational farming as an appropriate and sustainable livelihood; ensuring gender equality and equal opportunities with regard to representation and consideration of the specific roles that men and women play in traditional livelihoods; supporting traditional use of forest and forest resources; and adopting community-based, market engagement activities (AIPP 2010). Examples of such broader approaches are found in some countries in the region, although the extent to which indigenous peoples have participated in the design of the strategies varies widely.

In the Philippines, pursuant to the Indigenous Peoples Rights Act, the National Commission on Indigenous Peoples has the mandate to develop a five-year master plan for the delivery of support services to indigenous peoples based on needs assessments of indigenous communities and consultations with, among others, leaders of indigenous peoples' organizations, indigenous communities, national government agencies, and civil society. The Indigenous Peoples Master Plan (2012–2016) places particular emphasis on building capacity and creating economic opportunity in indigenous communities towards achieving food security and economic growth, and protecting the ecosystem and sustainable management of natural resources in the ancestral domains and lands against the backdrop of climate change (NCIP 2012).

Among the measures envisaged for this purpose, the Plan includes: the issuance and registration of certificates of ancestral domain titles; the formulation of integrated area or community development approaches; agroforestry development and organic farming; mainstreaming indigenous peoples' products in the market chain; provision of agricultural equipment; skills development and training in, among other skills, the development of business planning and entrepreneurship, organic handicraft development, organic vegetable processing technology, bamboo production and processing, fertilizer production and soil conservation and management, fruit processing into various by-products, and climate change adaptation; public works, including irrigation systems and farm to market roads; and ecotourism development. Targeted capacity-building is also contemplated for local government units and national government agencies with a view to equipping them with the capacity effectively to provide the needed services to indigenous peoples. These programmes encompass, among others, capacity-building on the Indigenous Peoples Rights Act and related laws and policies, convergence of programmes and services, and monitoring and evaluation (NCIP 2012).

In India, the Ministry of Tribal Affairs is entrusted with providing more focused attention on the integrated social and economic development of the most underprivileged sections of Indian society, namely the scheduled tribes, in a coordinated and planned manner (ILO, AIPP 2010, p. 36). In practice, this has consisted in administering various central government schemes that channel funds towards the welfare of these scheduled tribes (ILO, AIPP 2010).

The various programmes directed at supporting economic activities include the Tribal Cooperative Marketing Development Federation of India, a multi-state cooperative society created in 1987 with the aim of providing marketing assistance to scheduled tribes and ensuring that they receive remunerative prices for their forest products and surplus agriculture produce (Dhir 2015). Support to income-generating and marketing activities for scheduled tribes is also provided by the National Scheduled Tribes Finance and Development Corporation.

In addition, India's Mahatma Gandhi National Rural Employment Guarantee Scheme, which is a poverty-alleviation scheme aimed at enhancing livelihood security in rural areas by providing at least 100 days of guaranteed wage employment, has special provisions for scheduled tribes, such as, for instance, up to 50 additional days of wage employment per scheduled tribe household living in forest areas (Press Information Bureau, Government of India 2014). This scheme also engages with environmental concerns, and in 2015 converged with the National Mission for Green India, which is one of the eight missions under the National Action Plan on Climate Change, and is aimed at increasing and improving the forest cover in the country (Ministry of Environment, Forests and Climate Change 2015).

India's 2015 policy for skills development and entrepreneurship also explicitly identifies scheduled tribes as a target group (Ministry of Skill Development and Entrepreneurship, 2015), and in 2016, the Government launched the Stand-Up India Scheme aimed at promoting entrepreneurship among scheduled tribes, scheduled castes and women through targeted loans of between 1 million and 10 million rupees (approx. US\$ 15,000 and US\$ 150,000) (Times of India 2016). In addition, the Tribal Subplan³⁹ places emphasis on improving access to irrigated land, entrepreneurship and skills development (Dhir 2015).

In Bangladesh the sixth five-year plan (2011–2015) includes measures designed to promote rural development and income-generating activities for indigenous peoples, such as poultry and livestock-rearing, social forestry and cultivation of fruit and medicinal plants. It also focuses on resolving land disputes, providing microcredit, and realizing infrastructure works, including the building of rural roads and bazaars (Dhir 2015). Training courses on vegetable cultivation techniques and bank financing have been provided to indigenous women from the Chittagong Hill Tracts (CEACR 2016c).

In Cambodia, the National Policy on the Development of Indigenous Peoples provides for the enhancement of indigenous peoples' living standards through the development of agricultural production. It emphasizes, among other factors, irrigation, the improvement of cultivation, vocational training aimed at income generation from sources other than traditional practices, and the provision of credit for agricultural production (ILO 2015b). According to information provided by the Ministry of Labour and Vocational Training, vocational training courses on vegetable planting, animal raising, fish raising, and rubber resin tapping are provided for ethnic groups who live in the north-east provinces of Cambodia (CEACR 2014).

³⁹ The Tribal Subplan has been in force since 1974 with the objective of ensuring budgetary resources for the development of scheduled tribes (Dhir 2015, p. 46).

Box 11. Indigenous children

According to ILO estimates, the Asia and Pacific region has the largest absolute number of child labourers (ILO 2013b). Data concerning specifically indigenous children are, however, scarce owing to the overall statistical invisibility of indigenous groups, which adds to the difficulties of estimating child labour in general.

In Nepal, available data show that the highest proportion of child labour and hazardous child labour is found among the Adivasi-Janajati. In India, 16.6 per cent of children aged between 5 and 14 from households headed by a scheduled tribe member are reportedly engaged in work. This percentage is considerably higher than that of other groups. In Viet Nam, the percentage of child labourers aged between 5 and 14 is three times higher among ethnic minority children than among Kinh-Hoa children (Dhir 2015).

Indigenous child labour is seen as a reflection of the marginalization and deprivation that many indigenous peoples experience. For instance, consultations held in the Philippines in the framework of ILO research on indigenous child labour revealed the following key driving forces behind child labour: loss of lands, violation of indigenous peoples' collective rights, and the impact of extractive industries leading to the worsening of the economic condition of indigenous peoples (ILO 2007).

ILO work on indigenous child labour identifies three critical steps to prevent and eliminate child labour, namely:

- facilitate the mainstreaming of indigenous peoples' priorities in poverty reduction strategies;
- support and facilitate indigenous peoples' participation in the development of such strategies;
- promote a multi-faceted development approach based on customary livelihoods (ILO 2007).

Viet Nam has also adopted targeted measures to support the livelihoods of ethnic minorities. These include land reallocation, the provision of preferential loans and other forms of support for job creation in the mountainous areas, and vocational training. It has been noted that the vocational training provided under national programmes often does not suit local needs and that specific training on agriculture would be required, along with additional measures, to encourage investments in rural areas and strengthen the capacity of local authorities to support communities (ILO 2015a). In Nepal, the Ministry of Industry has been implementing a micro-enterprise development programme with a special focus on the traditional skills of indigenous peoples (CEACR 2016a). In Malaysia, the Government has introduced income-generating programmes and commercial agricultural activities tailored specifically for indigenous communities (Malaysia 2015).

Furthermore, examples of special measures designed to promote the access of women and men from indigenous peoples to wage employment and related training opportunities are found in a number of countries (see section 5.3 below, on education). For example, a system of quotas in public employment in favour of indigenous peoples exists in Bangladesh, India and Malaysia (CEACR 2016b, CEACR 2016c, JOAS 2015). In Viet Nam, among other measures adopted to promote employment and training opportunities for ethnic minorities, under the Labour Code, the State shall assist employers who employ a large number of people from ethnic minorities (CEACR 2016e). In Cambodia, the Law on the Status of Civil Servants gives priority to the recruitment of indigenous candidates to government positions (ILO 2015b). In Nepal, a youth employment programme has been initiated targeting economically deprived groups. The Technical and Vocational Training Council allocates 5 per cent of its scholarships to the Adivasi-Janajati (CEACR 2016a).

5.3. Culture and education

Special measures in the field of culture and education targeting indigenous peoples have been adopted in virtually all the countries examined for this study. Where culture is concerned, Viet Nam, for example, adopted a policy in 2011 on the conservation and development of ethnic minorities' culture until 2020. As a result, for the first time after many decades, the language of the Thai and the Dao ethnic groups has been reinstated in teaching programmes at school (ILO 2015a).

On the other hand, Law 28/2001 on Cultural Heritage provides for the protection of the customs, ways of life and lifestyles of the country, but stipulates that outdated customs that harm the people's cultural life shall be abolished (art. 22) (UN 2015d). Likewise, Nepal has adopted a national cultural policy for the preservation of the cultural heritage of indigenous peoples (CEACR 2016a). More importantly, the country's new Constitution recognizes the right of every Nepalese community residing in Nepal to preserve and promote its language, script, culture, cultural civilization and heritage (art. 32).

In the Philippines, the Indigenous Peoples Rights Act stipulates that the State shall respect, recognize and protect the right of indigenous cultural communities and indigenous peoples to preserve and protect their culture, traditions and institutions (section 29). In Cambodia, the 2005 Policy for Curriculum Development for Primary and Secondary Schools sets out to promote understanding and appreciation for other peoples and other cultures, civilizations and histories (ILO 2015b, p. 77). The National Policy on the Development of Indigenous Peoples provides that the culture, beliefs and traditions of indigenous peoples should be incorporated in school curricula (ILO 2015b). The national social and economic development plan (2011–2015) of the Lao People's Democratic Republic includes the provision of support for the maintenance of cultural sites of ethnic minorities.

In Malaysia a study by the indigenous peoples' network Jaringan Orang Asal SeMalaysia (JOAS) has observed that cultural affairs are essentially linked to the promotion of tourism and identifies the need for the revision of the 1970 National Culture Policy with a view to ensuring the promotion and protection of indigenous peoples' cultures from being misused, especially in tourism (JOAS 2015). In India, a study conducted by the ILO and AIPP found that, in spite of several references in legal and policy instruments, the cultural rights of scheduled tribes are not considered to be a priority (ILO, AIPP 2010).

In the Philippines the Indigenous Peoples Rights Act provides for the adoption of special measures, including scholarships and grants, to ensure equal opportunities for indigenous peoples to gain access to education, while also recognizing the right of these peoples to establish and control their education systems and institutions. It further provides for the adoption of effective measures, in consultation with indigenous peoples, to ensure that the dignity and diversity of their cultures, traditions, histories and aspirations are appropriately reflected in all forms of education, public information and cultural-educational exchange (sections 30 and 31). The Department of Education has created an Indigenous Peoples' Education Office and is implementing an Indigenous Peoples' Education Framework (AIPP 2015d).



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In Viet Nam, the 2005 Education Act lays down that the State should facilitate the learning of ethnic minority languages and scripts by the children of those minorities, in order to preserve their cultural identity. In 2008–2009, 17 provinces and cities⁴⁰ were able to provide teaching of ethnic minority languages as part of the curriculum in secondary school. Yet, according to the Committee for Ethnic Minorities Affairs, these languages are at risk of disappearance, as a result, among other factors, of broader processes of cultural integration and assimilation and the poor quality of textbooks and training of teaching personnel (ILO 2015a).

Despite the notable achievements in improving access to education throughout the country, illiteracy and dropout rates, in particular after primary education, remain high among ethnic minorities, mainly owing to language barriers, poverty-related factors, school fees, irrelevance of curricula proposed to children from ethnic minorities, hostile perceptions by others and difficult relationships with teachers who are not, in many cases, from ethnic minority groups and often lack training in bilingual education (CEDAW 2015, CESCR 2014, CRC 2012a, ILO 2015a).

It has also been noted that indigenous children have limited opportunities to preserve and exercise their distinct identities (CRC 2012a). A pilot project undertaken by the Ministry of Education and Training in collaboration with the United Nations Children’s Fund (UNICEF) is promoting bilingual education for the Hmong, Jarai and Khmer ethnic groups at the preschool and primary school levels, in three provinces (UN 2015d).

40 In her report of 2015, the UN Special Rapporteur in the field of cultural rights refers to 20 provinces and cities (UN 2015c).

In Cambodia, despite the remarkable progress made in boosting primary and secondary enrolment, children from ethnic minorities display comparatively low enrolment rates. The appropriateness of curricula and the accessibility of educational services in geographically remote areas remain major challenges (CRC 2011). In 2016, the Government launched a multilingual educational plan of action which builds on previous programmes of bilingual education for indigenous children. The plan envisages the construction of community schools in an effort to secure bilingual education from the initial stages of primary-level schooling (UN 2016c). The National Policy on the Development of Indigenous Peoples provides for the development of a training programme for school teachers focused on the learning of the language and cultures of indigenous peoples (clause 2).

The new Constitution of Nepal recognizes the right of every community to education in its mother tongue and the right to establish and run educational institutions (art. 31.5). This provision has been regarded as crucial for the identity, dignity and integrity of the indigenous peoples in the country (Roy 2016, p. 33). It is an undeniable fact that indigenous children have low enrolment and high drop-out rates (CRC 2016).

Similarly, in India, the Constitution provides for education in their mother tongue for children belonging to ethnic minorities at primary school (art. 350A). This provision notwithstanding, the lack of mother-tongue education in primary classes has been deemed to be one of the main reasons underpinning the low rate of access to education of children from scheduled tribes. Other reasons identified include poor infrastructure and ignorance by non-tribal teachers about the languages and culture of children from scheduled tribes (ILO, AIPP 2010).

A range of special measures have been adopted to ensure access to education, including the establishment of boarding schools for children from remote areas, and admission quotas in higher educational institutions (ILO, AIPP 2010). Despite progress in improving enrolment rates, dropout rates after the completion of primary school remain high compared to the rest of the population (IFAD 2013). In addition, it is reported that quotas at higher levels of education remain largely unfulfilled. The reasons for this are manifold and concern not only the lack of funding, but also deeper marginalization. Discrimination by other communities and high-caste teachers results in a high rate of absenteeism (ILO, AIPP 2010).

In Malaysia, the Federal Constitution provides for the allocation of scholarships to the natives of Sabah and Sarawak (art. 153.2). It does not contain a similar provision in favour of the Orang Asli of Peninsular Malaysia (JOAS 2015). The 1954 Aboriginal Peoples Act recognizes the right of the Orang Asli to follow their own ways of life. Nevertheless, the high drop-out rates among the Orang Asli have been regarded as a significant indicator of the extent to which the curricula proposed are extraneous to their way of life.

The 1966 Education Act stipulates that the teaching of indigenous languages should be provided in national schools “if it is reasonable and practicable to do so” (JOAS 2015, p. 119). While this has made possible the teaching of two indigenous languages, many other requests have been left unattended. The criteria of “reasonable and practicable” have been perceived as a considerable barrier and the allocation of more resources for the teaching of indigenous languages has been demanded (JOAS 2015). Furthermore, the lack of birth certificates impedes access to access education by many indigenous children (JOAS 2015).

In Bangladesh, the Constitution contemplates the adoption of special measures in favour of “backward sections of citizens” (art. 28). The 2010 National Education Policy provides for mother-tongue-based education for indigenous children. The 2010 Small Ethnic Groups Cultural Institutions Act further establishes quotas for the enrolment of ethnic minorities in higher educational institutions (CEACR 2016c). Nevertheless, indigenous and Dalit children reportedly continue to face discrimination and violence and lack access to quality education, in particular in their mother tongue (CRC 2015).

Indonesia’s 2003 Educational System Act also provides for the adoption of positive measures in favour of indigenous peoples. Education facilities are not available to all communities, however, because of their geographical remoteness and, when they are available, they often lack teachers (IFAD 2012a). The national development plan places a particular emphasis on the inclusion of communities in remote areas, although there is no specific reference to indigenous peoples (Dhir 2015).

Thailand is also faced with the challenge of a shortage of facilities, teachers and teaching materials in remote areas. A number of pilot projects designed to include the teaching of ethnic languages in schools have been mounted, under the 1999 National Education Act, to offset the current limited opportunities for many ethnic children to learn their languages and to counter the risk of disappearance of some of these languages (CRC 2012b, ILO 2015c). Reports indicate that indigenous children are denied enrolment because of the lack of identification documents and lack of facilities and resources to accommodate multicultural and bilingual classes (ILO 2015c).

In the Lao People’s Democratic Republic, the National Plan of Action for Education for All (2003–2015) acknowledges that children from ethnic minorities face considerable barriers to education, including the lack of qualified teachers and the absence of schools in many villages in provinces with a large ethnic minority population. In response, the Ministry of Education and Sport has taken a number of positive steps, including the establishment of boarding schools in remote areas, construction of new schools, school-fee exemption and the provision of textbooks, meals, uniforms and access to health care for children from ethnic minorities (CEACR 2016d, IFAD 2012b).

5.4. Social protection, health and other public policies

Social protection plays an important role in preventing and reducing poverty, inequality, social exclusion and social insecurity. According to a report by the Asian Development Bank, in Asia and the Pacific, the non-poor represent, on average, 83 per cent of all potential beneficiaries of social protection, while the poor represent only 17 per cent. This can be explained by the fact that social insurance is the predominant form of social protection in Asia and the Pacific. This dominance is most pronounced in East Asia and South-East Asia, whereas in South Asia, social assistance almost equals the importance of social insurance. The report highlights that, because social assistance benefits the poor and women much more than social insurance, increasing its depth (its average benefits) should be a priority (ADB 2013).

Box 12. Social protection for indigenous peoples as a tool to foster greater social inclusion in Asia

Convention No. 169 and UNDRIP both recognize indigenous peoples' right to social security without discrimination. Convention No. 169 provides that social security schemes shall be extended progressively to cover indigenous peoples (art. 24). UNDRIP declares that indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including in the areas of social security. They shall be actively involved in developing and determining economic and social programmes affecting them and, to the extent possible, shall administer such programmes through their own institutions (arts. 21 and 23).

CESCR has also emphasized that States should take particular care to ensure that indigenous peoples and ethnic and linguistic minorities are not excluded from social security systems through direct or indirect discrimination, particularly through the imposition of unreasonable eligibility conditions or lack of adequate access to information (UN 2008b).

The ILO Social Protection Floors Recommendation, 2012 (No. 202), provides guidance on the establishment of social protection floors as part of national strategies for the extension of social security that progressively ensure higher levels of social security to as many people as possible. Social protection floors are nationally defined sets of basic social security guarantees which should ensure at a minimum that, over the life cycle, all in need have access to essential health care and to basic income security, which together secure effective access to goods and services defined as necessary at the national level.

The National Social Protection Strategy of Cambodia identifies indigenous peoples and ethnic minorities as special vulnerable groups for the purpose of designing tailored approaches (ADB 2014). In Viet Nam, 29 million poor people and members of ethnic minority groups have been provided with free health insurance (ILO 2015).

For many indigenous peoples, the lack of official registration at birth⁴¹ and, consequently, of identification documents poses a considerable obstacle to their access to social services. Besides preventing their enrolment in school, as noted above, this also impedes their admission to health services and access to justice (CEDAW 2014), affects their employment opportunities, and makes them particularly vulnerable to trafficking, especially in the case of indigenous children and women. In Thailand, for example, it has been estimated that 600,000 people out of the country's 2 million stateless people are from indigenous and minority backgrounds (UN-Women et al. 2013).

Countries such as Thailand and Viet Nam have been taking proactive measures to deal with this issue, including the legal recognition of the right to birth registration, abolition of the birth registration fee, and the provision for late registration (UN 2012d, CRC 2012a). Their geographical remoteness and the lack of rural infrastructure and transport also have a considerable impact on the availability and accessibility of social services (see, for example, IFAD 2012a). Even when these services are available, language barriers reportedly also affect their accessibility (see for example, CERD 2012b, ILO 2015c).

Regarding access to health care, some States have adopted special measures to address current obstacles faced by indigenous women and men. In Cambodia, although the National Health Strategic Plan (2008–2015) does not refer specifically to indigenous communities, special measures

41 A different trend with regard to birth registration has been noted in the predominantly indigenous north-eastern state of Mizoram in India, which shows a rate of 93 per cent of birth registration, much higher than the national average (UN-Women et al. 2013).

designed to ensure that indigenous peoples can gain access to health services and receive a culturally appropriate service are adopted under the Second Health Sector Support Programme. To this end, consultations have been undertaken with indigenous communities in the provinces of Ratanakiri, Mondulkiri and Kratie with a view to identifying their needs and challenges and key areas of intervention (ILO 2015b). In Viet Nam too, special programmes have been put into place to tackle the lack of access of ethnic minorities to health care.

Almost all communes in the mountainous regions and areas where ethnic minorities are concentrated are equipped with a commune health-care centre. Long distances, together with poor infrastructure and poverty, however, remain an abiding challenge for many people from ethnic minorities (ILO 2015a). Similarly, in the Lao People's Democratic Republic, basic health infrastructure has been set up in the remote areas where ethnic minorities live (IFAD 2012b) and the country's national social and economic development plan for the period 2011–2015 included among its objectives the provision of safe water supplies and improved sanitation for communities living in remote areas (AIPP 2015c).

In Nepal, the Gender and Social Inclusion Programme launched by the Ministry of Health to improve access to health services also recognizes traditional health systems and practices (CEACR 2016a). Notwithstanding that recognition, indigenous peoples' health continues to be seriously affected by food insecurity, chronic hunger and malnutrition, which stem, in large part, from the loss of lands, access to natural resources, and livelihoods (UN 2013a). There are also reports of the alleged adverse health impact of extractive projects owing to environmental contamination, particularly with regard to women's reproductive health (UN 2013a, AIPP 2015e; UN 2015c). Where disaggregated data are available, they show higher rates of maternal and neonatal mortality, stunting and malnutrition for indigenous people (see for example, CEDAW 2015 and CRC 2012a).

The absence of comprehensive and participatory social impact assessments of proposed development plans, relocations and, in many cases, the inadequate nature or total lack of compensation, often resulting from the non-recognition of indigenous peoples' rights to land and natural resources, continue to have an enormous impact on indigenous peoples throughout Asia. With few exceptions, such as the 2013 Land Acquisition Act in India (UN 2016d), when impact assessments are required prior to the approval of development plans and projects, those assessments are limited to environmental impacts (UN 2014b, UN 2015c).

Often alternative housing is not provided and resettlement and rehabilitation policies are not properly implemented (IFAD 2013, AIPP 2015c). For example, in India, according to the 2002–2007 five-year plan of the National Commission on Scheduled Castes and Scheduled Tribes, 8.54 million people from scheduled tribes were displaced from their traditional lands as a result of development projects. Of these, only 25 per cent were resettled. In the analysis conducted by the Commission, the displacement led to loss of assets, unemployment and debt bondage (UN-Women et al. 2013).

Likewise, studies indicate that, in the Lao People's Democratic Republic, Thailand and Viet Nam, the relocation of communities affected by development projects has often caused the disintegration of the affected communities because of the lack of economic and subsistence support, difficulties in finding an alternative livelihood, and tensions between other indigenous

and non-indigenous communities over limited land resources (UN-Women et al. 2013, CESCR 2014). The adverse effects of resettlements and sedentarization programmes on the cultural rights of the communities concerned are rarely taken into consideration.

5.5. Conclusions

The present chapter has reviewed examples of public policies, laws and practices relevant for the realization of the economic, social and cultural rights of indigenous women and men. Strikingly, most of the countries reviewed have adopted national development and poverty reduction strategies that recognize the disadvantaged social and economic situation of indigenous peoples, and some of these strategies also envisage targeted action in favour of indigenous peoples, including, for instance, in Bangladesh, India, Nepal and Viet Nam. Cambodia and the Philippines have also explicitly emphasized in their policies the right of indigenous peoples freely to pursue their economic, social and cultural development and decide their related priorities, inspired by Convention No. 169 and UNDRIP. This is consistent with these countries' recognition of indigenous peoples and laws and policies regarding consultation and participation, land and natural resources, and recognition of their distinct cultures and identity.

The overall picture with regard to general development strategies and approaches, however, is characterized by insufficient attention to indigenous peoples as distinct collectivities and to their participation in the design and implementation of development plans, projects and programmes. Lack of participation, in practice, means that their needs, priorities and aspirations cannot be appropriately addressed, and that decisions on their development are made by others from the outside, without heeding the voices or following the leadership of indigenous peoples.

All the countries reviewed in this study have taken dedicated measures in the field of education and culture targeting indigenous peoples. Such measures could be further strengthened as they are crucial for promoting respect for indigenous cultures, identities and ways of life, for combating negative stereotypes that underpin and nurture assimilationist attitudes and approaches, and for ensuring the access of indigenous girls and boys to quality education.

Regarding more specifically the education system, many States have considered the provision of mother-tongue-based bilingual education, the teaching of indigenous languages and the adoption of special measures to ensure equal opportunities to access education for indigenous girls and boys. Some progress has indeed been made towards improving indigenous children's enrolment in school. Illiteracy and drop-out rates, however, particularly after primary education level, for indigenous girls and boys remain higher than national averages owing to a range of different factors, including, among others, discrimination, language barriers, lack of facilities and teachers, the content of school curricula, distances and costs. Only in a few countries, such as Nepal and the Philippines, does the national legislation recognize the right of indigenous peoples to establish and manage educational institutions.

Ensuring access to decent work and social protection for indigenous women and men is a key policy area for ensuring inclusive and sustainable development in Asia, where two thirds of the world's indigenous people live. Given that a vast majority will live in rural areas, policies for rural development are a key entry point for addressing the rights and needs of indigenous peoples. Enabling security of land tenure through effective recognition and protection of rights to land, as discussed in chapter 4 above, is important for ensuring that indigenous peoples can engage in their traditional livelihoods and occupations.

Most of the countries reviewed have policies that emphasize support to communities through access to training and skills development, entrepreneurship and enterprise development and access to markets and credit. Prejudices and negative attitudes towards indigenous peoples and their traditional livelihood activities and practice, however, such as shifting cultivation, continue to inform decision-making processes and public policies on these issues.

Only in some countries do public policies embody a specific focus on health and social protection for indigenous women, men and children, despite the fact that available data suggest that they are disproportionately represented among the poor. For instance, Cambodia's National Social Protection Strategy identifies indigenous peoples as a group requiring targeted approaches. In Viet Nam, special health programmes targeting ethnic minorities have been devised. In many countries, indigenous peoples lack official birth certificates or identification documents, which significantly impedes access by indigenous peoples to social services in Asia.

Nevertheless, all countries examined for this study have adopted some special measures targeting indigenous peoples with regard to their social, economic and cultural rights, including in relation to health, education, employment and occupation. This provides many entry points for efforts to further review and strengthen these measures in the context of the SDGs. Raising awareness of indigenous cultures and traditions, taking into account indigenous peoples' rights, ensuring their participation and the inclusion of both indigenous women and men in processes that lead to decisions on public policies and development plans and priorities will be critical in this context. Likewise, addressing the prevailing invisibility in many countries of indigenous peoples in official data will be essential for the identification of their needs and the formulation of appropriate policy responses.



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6. Looking ahead: recommendations as to the way forward

Asia is an immensely diverse region, hosting two thirds of the world's indigenous peoples who, in aggregate, represent 2,000 distinct civilizations and languages. Although in the laws and policies of the countries concerned these groups are referred to in many different ways, they have much in common in terms of their lifestyle, culture, customs and social institutions, and the way that their culture and existence are unusually contingent on their special relationship with their land, which distinguishes them from other parts of the national populations of the countries in which they live. Differences in positions and views relating to the concept of indigenous peoples have not prevented countries in the region from taking steps to address the specific situation of these groups.

The present study has sought to provide an overview of laws, policies and other measures in place in selected countries in Asia relevant to indigenous peoples' rights and development. The overview focused on four main thematic areas, namely identification and recognition of indigenous peoples; consultation and participation; land and natural resources; and public policies on cultural, social and economic rights. The study was undertaken against the backdrop of an unprecedented convergence towards integrated and human rights-based approaches in the global agendas on sustainable development and climate change, which also call for particular attention to the rights of indigenous peoples.

As repeatedly pointed out in the study, Asia is an extremely diverse region and host to two thirds of the world's indigenous peoples. Ensuring inclusive development is the major challenge currently facing the region. Despite the sustained growth and the efforts deployed to reduce poverty among its population, considerable social and economic gaps persist between indigenous and non-indigenous groups which derive from historical processes of their marginalization and domination.

In most of the countries reviewed for this study, national development and poverty reduction strategies specifically acknowledge the disadvantageous social and economic conditions of indigenous peoples. Some of them expressly envisage specific and targeted actions to address the needs of these peoples. Unless mindful of and informed by the human rights of indigenous peoples, however, these strategies risk failing to address their situation and may even aggravate it further.

The review of national experiences has illustrated that numerous countries in the region have moved ahead in promoting the rights and development of indigenous peoples, although many policy and protection gaps and challenges remain. While the nature of the study does not allow for specific recommendations to individual countries, several broader recommendations guiding future action in the region are set out below.



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Recommendation 1: Promoting ownership of the concept of indigenous peoples and valuing their cultures and contributions

A key recommendation to relevant policymakers and decision-makers is to take greater national and regional ownership of the concept of indigenous peoples across the Asian region, relying on the guidance available from Convention No. 169 and UNDRIP. Such initiatives could involve national and regional multi-stakeholder dialogues. In this connection, governmental and non-governmental stakeholders should carry out educational programmes and awareness-raising measures to combat prejudices and negative stereotypes against indigenous peoples, which often are at the root of their non-recognition and exclusion from public policies. Accordingly, valuing indigenous peoples' culture, practices and knowledge as contributions to the country's sustainable development and acknowledging the need for differentiated and participatory approaches to address the underlying causes of their marginalization and effective inequalities is particularly important.

Such action will be important for laying the ground for progress in addressing the rights and development needs of indigenous peoples in national laws, policies and programmes. In turn, this will be pivotal for the success of countries' overall development strategies and poverty reduction efforts, as they strive to tackle the underpinning causes of indigenous peoples' marginalization.

It is relevant in this context that most countries in the region have ratified UN human rights treaties or ILO Conventions that are particularly relevant to addressing the current marginalization of indigenous peoples, and hence have obligations under international law in this regard. As called for by the 2030 Agenda for Sustainable Development, development strategies designed to implement the Agenda should be coherent and consistent with countries' international human rights obligations.

Recommendation 2: Seizing the momentum of the 2030 Agenda and the Paris Agreement on climate change: indigenous peoples as partners and agents of change

The 2030 Agenda for Sustainable Development and the Paris Agreement on climate change offer unique opportunities for countries in the region to launch new forms of dialogue and cooperation among national stakeholders for development and climate change action, including indigenous peoples' networks and organizations. Dialogue between indigenous peoples and State institutions in this context could involve community-based participatory assessments of needs, priorities and strategic interventions to enhance indigenous peoples' occupations and to strengthen their livelihoods and economic activities, which would play a crucial role in informing local and national development strategies.

There is an urgent need to enhance the availability of knowledge and data on the social and economic situation of indigenous communities. Targeted research on the employment and working conditions of indigenous peoples could be envisaged, given the relatively scarce information available; furthermore, participatory assessments of indigenous peoples' vulnerabilities to climate change and comprehensive impact assessments of mitigation and adaptation strategies should be undertaken. Documentation of indigenous peoples' experiences based on their traditional knowledge and practices relevant to the design of climate change responses could also be envisaged, with the participation of the peoples concerned.

Recommendation 3: Taking action to ensure indigenous peoples' consultation and participation through appropriate mechanisms and procedures

The realization of indigenous peoples' rights to consultation and participation and the effective recognition and protection of their rights to lands and natural resources are fundamental to enabling inclusive development that takes into account indigenous peoples' own priorities and aspirations. Across the region, there is a need for policymakers and decision-makers to review the current situation, engage with indigenous peoples, and to devise specific actions to enhance the participation of indigenous peoples in public affairs, including the development, implementation and monitoring of development plans.

This also calls for renewed attention in the countries in the region to establishing dedicated mechanisms and procedures for consultation with indigenous peoples on measures that may directly affect them, including development projects. Engaging in country-based participatory assessments of existing consultation and participation arrangements can provide a first step in this regard.

Recommendation 4: Securing indigenous peoples' rights to land and natural resources

Action to secure the effective recognition and protection of indigenous peoples' rights to land and natural resources will be crucial for ensuring livelihoods, food security, and safeguarding the cultural integrity and traditional knowledge of indigenous peoples in the region. It would be advisable to consider incorporating in the legislation the recognition of indigenous peoples' customary rights to lands and natural resources, and undertaking assessments of the legislation in force, in collaboration with indigenous peoples, to identify the measures needed to address current implementation gaps and bottlenecks, including simplification of land-titling procedures and strengthening of government agencies' implementing capacity. Reviews of legislative frameworks to ensure coherence across sectoral legislation should also be envisaged.

Recommendation 5: Improving availability, accessibility and appropriateness of public services

Most countries in the region have taken some special measures to ensure the enjoyment of economic, social and cultural rights by indigenous women and men. Future policy assessments and improvements should seek to strengthen these measures by extending their reach, accessibility and cultural appropriateness, and by increasing cooperation by the State with indigenous communities in the design and delivery of support schemes. This undertaking could be facilitated through the participatory documentation of self-managed programmes, with a view to identifying lessons learned.

Furthermore, community-based surveys could be envisaged in order to collect background information for the formulation of appropriate public policies, including the design of affirmative action measures, in collaboration with indigenous peoples. The holistic and participatory design of social protection measures that respect the livelihood framework of indigenous peoples could also be promoted.

Recommendation 6: Focus on indigenous women

Renewed action in Asia to promote the rights and development of indigenous peoples should include a specific focus on indigenous women. Supporting empowerment, including the economic empowerment of indigenous women within and beyond their communities, is needed not only to ensure respect for their rights and gender equality, but also because their contributions are vital for achieving more general development and climate-action goals.

Specific attention should be paid to ensuring the equal participation of indigenous women in dialogue and consultations with State institutions at all levels, their access to land and natural resources, and the accessibility to them of public services. National efforts to combat violence against women should address the situation of indigenous women, with their full involvement. Initiatives to increase knowledge and data on the social and economic situation of indigenous peoples should specifically address the situation of indigenous women.

Recommendation 7: Promoting ratification of Convention No. 169

Although UNDRIP enjoys wide support in the region, only one country, Nepal, has so far taken the step of ratifying Convention No. 169. At the same time, at the 2014 World Conference on Indigenous Peoples, all UN Member States were urged to consider ratifying the Convention. Exploring the ratification of Convention No. 169 can facilitate both the identification of indigenous and tribal peoples within the meaning of the Convention and also the development of legislative and policy frameworks that address persisting social and economic disparities in diverse national societies in a rights-based and balanced manner.

Countries that wish to consider ratification could engage in preliminary assessments to study the implications and added value of that step, through processes involving ILO constituents (namely, government, workers and employers organizations), indigenous peoples and other relevant stakeholders, as appropriate. The ILO has encouraged countries that have already ratified the Indigenous and Tribal Populations Convention, 1957 (No. 107) to consider ratification of Convention No. 169, the ILO's most recent instrument on indigenous and tribal peoples.

Recommendation 8: Building national capacities

Tackling the remaining gaps and challenges will require renewed efforts to build the capacities of a wide range of national stakeholders, including governments, indigenous peoples' organizations and institutions, employers' and workers' organizations, national human rights institutions, parliamentarians, the judiciary, non-governmental organizations, educationalists and the media.

In addition to strengthening the capacity of individuals, capacity needs to be sustainably entrenched in institutions in order to ensure that policy, legal and institutional reforms can be followed through. On government side, more attention is needed to ensure effective coordination and cooperation across line ministries responsible for matters relating to indigenous peoples' rights and development. Documenting and sharing experiences across the region can support and reinforce national processes.

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Annex 1 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)

Convention No. 169

CONVENTION CONCERNING INDIGENOUS AND TRIBAL PEOPLES IN INDEPENDENT COUNTRIES

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 76th Session on 7 June 1989, and

Noting the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and

Recalling the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

Considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards, and

Recognising the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live, and

Noting that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded, and

Calling attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding, and

Noting that the following provisions have been framed with the co-operation of the United Nations, the Food and Agriculture Organisation of the United Nations, the United Nations Educational, Scientific and Cultural Organisation and the World Health Organisation, as well as of the Inter-American Indian Institute, at appropriate levels and in their respective fields, and that it is proposed to continue this co-operation in promoting and securing the application of these provisions, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957,

adopts this twenty-seventh day of June of the year one thousand nine hundred and eighty-nine the following Convention, which may be cited as the Indigenous and Tribal Peoples Convention, 1989:

PART I. GENERAL POLICY

Article 1

1. This Convention applies to:
 - (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
 - (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.
2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.
3. The use of the term “peoples” in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

Article 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.
2. Such action shall include measures for:
 - (a) ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;
 - (b) promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;
 - (c) assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

Article 3

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.
2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.

Article 4

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.
2. Such special measures shall not be contrary to the freely expressed wishes of the peoples concerned.
3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

Article 5

In applying the provisions of this Convention:

- (a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;
- (b) the integrity of the values, practices and institutions of these peoples shall be respected;
- (c) policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

Article 6

1. In applying the provisions of this Convention, governments shall:

- (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
- (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;
- (c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

Article 7

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

Article 8

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

Article 9

1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.

2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

Article 10

1. In imposing penalties laid down by general law on members of these peoples account shall be taken of their economic, social and cultural characteristics.

2. Preference shall be given to methods of punishment other than confinement in prison.

Article 11

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

Article 12

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

PART II. LAND

Article 13

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

2. The use of the term "lands" in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

Article 16

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

Article 17

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

Article 18

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

Article 19

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

- (a) the provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;
- (b) the provision of the means required to promote the development of the lands which these peoples already possess.

PART III. RECRUITMENT AND CONDITIONS OF EMPLOYMENT

Article 20

1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.

2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:

- (a) admission to employment, including skilled employment, as well as measures for promotion and advancement;
- (b) equal remuneration for work of equal value;
- (c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;
- (d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.

3. The measures taken shall include measures to ensure:

- (a) that workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;
- (b) that workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;
- (c) that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;
- (d) that workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.

PART IV. VOCATIONAL TRAINING, HANDICRAFTS AND RURAL INDUSTRIES

Article 21

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

Article 22

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.

2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.

3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively

assume responsibility for the organisation and operation of such special training programmes, if they so decide.

Article 23

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted.

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

PART V. SOCIAL SECURITY AND HEALTH

Article 24

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

Article 25

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.

4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.

PART VI. EDUCATION AND MEANS OF COMMUNICATION

Article 26

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

Article 27

1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.

2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.

3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

Article 28

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.

3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

Article 29

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.

Article 30

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.

2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.

Article 31

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

PART VII. CONTACTS AND CO-OPERATION ACROSS BORDERS

Article 32

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

PART VIII. ADMINISTRATION

Article 33

1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.

2. These programmes shall include:
- (a) the planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention;
 - (b) the proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned.

PART IX. GENERAL PROVISIONS

Article 34

The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

Article 35

The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

PART X. FINAL PROVISIONS

Article 36

This Convention revises the Indigenous and Tribal Populations Convention, 1957.

Article 37

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 38

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 39

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 40

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 41

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 42

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 43

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides –

- (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 39 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 44

The English and French versions of the text of this Convention are equally authoritative.

Annex 2 – United Nations Declaration on the Rights of Indigenous Peoples, 2007

United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights⁴² and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action,⁴³ affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights⁴⁴ and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

42 See resolution 2200 A (XXI), annex.

43 A/CONF.157/24 (Part I), chap. III.

44 Resolution 217 A (III).

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

The rights of indigenous peoples in Asia

Human rights-based overview of national legal
and policy frameworks against the backdrop of country
strategies for development and poverty reduction

Stefania Errico



Gender, Equality and Diversity Branch
Regional Office for Asia and the Pacific

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Preface

The ILO's strategy for action concerning indigenous and tribal peoples places the promotion of indigenous peoples' rights squarely in the context of inclusive and sustainable development.* The strategy emphasizes the development of knowledge on the situation of indigenous peoples, which is of key importance as countries are setting out to devise new strategies and programmes to implement the Sustainable Development Goals.

Over recent years, the ILO has undertaken a number of country studies on indigenous peoples in Asia, several of them jointly with the Asia Indigenous Peoples Pact (AIPP) and with the support of the European Union. The studies have shed some light on the present state of national laws and policies addressing indigenous peoples' rights and issues.

The present study, which draws on previous ILO and AIPP work, was prepared to provide a regional overview designed to inform future policy debates and interventions, and also to support efforts to promote the ratification of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), in the region.

The report seeks to draw a realistic picture of major trends and challenges, and identifies important new opportunities in the framework of the new global agendas on sustainable development and climate action, which call for specific attention regarding the rights and concerns of indigenous peoples.

We would like to express our sincere gratitude to the study's author, Stefania Errico, an independent consultant and expert on indigenous peoples' issues, who has previously worked at the ILO. We acknowledge with thanks the contributions of Martin Oelz of the ILO's Gender, Equality and Diversity Branch (GED) who coordinated the study, Rishabh Kumar Dhir (GED), Joni Simpson (ILO Decent Work Country Team Bangkok), Lee Swepston, former ILO Senior Adviser on human rights, and also an anonymous external peer reviewer who provided valuable feedback.

It is hoped that the study will be helpful in supporting the work of ILO constituents and partners, including indigenous peoples, the United Nations system, and other development partners, as they engage in national, regional and global efforts to make sustainable and inclusive development a reality for all.

Tomoko Nishimoto
Assistant Director-General and
Regional Director for Asia and the Pacific
Regional Office for Asia and the Pacific

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Conditions of Work and Equality Department

* The strategy is available at www.ilo.org/indigenous.

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Abbreviations

ACHPR	African Commission on Human and Peoples' Rights
ADB	Asian Development Bank
AIIB	Asian Infrastructure Investment Bank
AIPP	Asia Indigenous Peoples Pact
AMAN	Alliance of Indigenous Peoples of the Archipelago (Indonesia)
CCPR	UN Human Rights Committee
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
CEDAW	UN Committee on the Elimination of Discrimination against Women
CERD	UN Committee on the Elimination of Racial Discrimination
CESCR	UN Committee on Economic, Social and Cultural Rights
CRC	UN Committee on the Rights of the Child
HRC	UN Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFAD	International Fund for Agricultural Development
ILO	International Labour Organization
IWGIA	International Work Group for Indigenous Affairs
JOAS	Jaringan Orang Asal SeMalaysia (Malaysian indigenous peoples' network)
MDG	Millennium Development Goals
NCIP	National Commission on Indigenous Peoples (the Philippines)
NPDIP	National Policy on the Development of Indigenous Peoples (Cambodia)
REDD	Reducing emissions from deforestation and forest degradation
SDGs	Sustainable Development Goals
SUHAKAM	Suruhanjaya Hak Asasi Manusia Malaysia (Malaysian Human Rights Commission)
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNICEF	United Nations Children's Fund
UNFPA	United Nations Population Fund
UN-Women	United Nations Entity for Gender Equality and the Empowerment of Women

1. Introduction

1.1. Indigenous peoples in Asia: at risk of falling further behind

Two thirds of the world's indigenous peoples are estimated to live in Asia,¹ in other words approximately 260 million people representing 2,000 distinct civilizations and languages (UN 2014a, AIPP, IWGIA 2010). The distinctive nature of indigenous peoples derives from their specific lifestyles, cultures, customs and social institutions and the way in which their culture and existence are built on their special relation with the lands and territories that they have traditionally occupied or used.

The different terms used to refer to them at the national level, ranging from “hill tribes” and “minority nationalities”, to “tribal peoples”, “ethnic minorities”, and “natives”, testify to the variety of their experiences in the region, and also to the varying legal recognition accorded to them in their respective countries (UN 2013a, UN 2007). Yet, such diversity notwithstanding, the situation of these people shows important commonalities and consequent similar challenges concerning their persisting marginalization, which has cultural, social, economic and political dimensions (UN 2013a, Erni, 2012).

A recent report by the World Bank identifies the achievement of more inclusive growth as a major challenge facing the region and calls for a renewed focus on boosting inclusion in Asia (World Bank 2016, p. 39). This applies in particular to the current situation of indigenous peoples in the region. Thus, indicators such as under-five mortality, water deprivation, malnutrition, literacy, and net primary-school enrolment for indigenous peoples in Asia remain worse than population averages (World Bank 2011).

Even though poverty rates have declined among indigenous peoples as a result of the sustained growth and poverty reductions efforts of the region, important gaps are found between indigenous and non-indigenous segments of the populations. In certain cases inequalities are even widening (OECD 2013, World Bank 2011). Estimates suggest that, overall, one third of the indigenous peoples living in Asia are poor (ODI 2014). In the Lao People's Democratic Republic, for example, people belonging to minority groups constitute 80 per cent of the poor, while representing one third of the population (OECD 2013). In Viet Nam, 66.3 per cent of ethnic minorities live in poverty, compared to 12.9 per cent of the majority group. As observed by the World Bank regarding that country, “ethnic minority poverty is a growing and persistent challenge” to what has been deemed to be a “development success story” (World Bank 2012, p. 2). Similarly, in India, the “scheduled tribes” are disproportionately represented among people living below the poverty line (Dhir 2015). Statistics only provide a partial picture of the situation, however, as important aspects of poverty, such as powerlessness, lack of voice, loss of cultural identity, are not captured by those figures (World Bank 2000).

1 According to estimates by the World Bank, 80 per cent of the world's indigenous people live in Asia (World Bank 2011).

1.2. Global agendas on indigenous peoples' rights, sustainable development and climate change: interlinked and mutually reinforcing

The adoption of international instruments specifically protecting the rights of indigenous peoples at the international level, namely the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), are considered historic milestones in the promotion and protection of human rights. These instruments articulate the rights of indigenous peoples with due regard to their specific cultural, historical, social and economic circumstances (UN 2008a).

On the occasion of the 2014 World Conference on Indigenous Peoples, UN Member States unanimously reaffirmed their commitment to respect, promote and advance and in no way diminish the rights of indigenous peoples and to uphold the principles of the Declaration and encouraged those States that had not yet done so to consider ratifying Convention No. 169.² The World Conference also highlighted the contribution of indigenous peoples to sustainable development and to climate change mitigation and adaptation.³

A study by the ILO has found that poverty reduction strategies may risk failing to address or may even aggravate the situation of indigenous peoples, in the absence of a human rights-based approach (ILO 2008). As highlighted by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), Convention No. 169 “provides important elements for overcoming discrimination against indigenous and tribal peoples and ensuring their equality of opportunity and treatment” (CEACR 2012, para. 772). In turn, the UN Committee on Economic, Social and Cultural Rights emphasized that “the application of the international human rights normative framework to these issues helps to ensure that essential elements of anti-poverty strategies, such as non-discrimination, equality, participation and accountability, receive the sustained attention they deserve” (CESCR 2001, para. 9).⁴

Poverty is a complex and multifaceted problem that requires a comprehensive and holistic approach addressing its economic, social, political and environmental dimensions and the root causes of persisting inequalities and social exclusion. Convention No. 169 and UNDRIP provide useful guidance in this regard, as States in the region prepare to implement the new interlinked global agendas on sustainable development and climate change.⁵ Indeed, these agendas are displaying an unprecedented convergence towards human rights-based approaches.

2 See the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, adopted by the United Nations General Assembly in resolution 69/2 of 22 September 2014, paragraphs 4, 6 and 34.

3 Ibid., paragraphs 34–37.

4 The UN guiding principles on extreme poverty and human rights, which were adopted by the Human Rights Council by consensus on 27 September 2012, are based on the understanding that “eradicating extreme poverty is not only a moral duty but also a legal obligation under existing international human rights law. Thus, the norms and principles of human rights law should play a major part in tackling poverty and guiding all public policies affecting persons living in poverty” (UN 2012a, p. 2).

5 The 2030 Agenda acknowledges the interrelated environmental, social and economic dimensions of sustainable development. In its turn, the Paris Agreement on climate change recognizes the “intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty” (Preamble) and sets out to “strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty” (art. 2).

Inequalities and poverty are key challenges to sustainable development and this has informed the 2030 Agenda for Sustainable Development, set out in the outcome document of 2015 UN Sustainable Development Summit, “Transforming our world”.⁶ It thus provides an exceptional opportunity to tackle them in a coherent and systematic fashion and with the participation of the peoples concerned, in keeping with the agreed objectives to “build peaceful, just and inclusive societies, end poverty and hunger everywhere and combat inequalities” (UN 2015a, para. 3).

Pledging to leave no one behind, the 2030 Agenda is also expressly grounded on human rights and is informed by the UN Declaration on the Right to Development (para. 10). It stresses that development strategies designed to implement the Agenda should be coherent and consistent with international human rights obligations (para. 10). According to a study by the Danish Institute for Human Rights, 156 of the 169 targets under the Sustainable Development Goals (SDGs) have substantial linkages with UN and ILO Conventions on human and labour rights (DIHR 2016). Indigenous peoples are explicitly referred to under two SDGs⁷ and most other SDGs have a direct bearing on the rights and well-being of these peoples (ILO 2016a). Furthermore, the Agenda encourages States to conduct regular and inclusive reviews of the progress made, drawing on the contributions from indigenous peoples (para. 79).

The Paris Agreement on climate change, adopted in December 2015, is the first agreement on this vital matter, and one of the first environmental agreements of any type which expressly recognizes the relevance of human rights (UN 2016a). In its preamble the Agreement states that, when taking action to address climate change, States Parties should respect, promote and consider their respective obligations regarding human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations, the right to development, and gender equality.

The Agreement stipulates that adaptation action should take into account indigenous peoples’ traditional knowledge (art. 7). It underscores the interlinkages between climate change impact and interventions and equitable access to sustainable development and eradication of poverty (preamble). It thus mirrors the findings of the Intergovernmental Panel on Climate Change, according to which people “who are socially, economically, culturally, politically, institutionally or otherwise marginalized are especially vulnerable to climate change and also to some adaptation and mitigation responses” (IPCC 2014, p. 9). The same report identifies indigenous peoples’ traditional knowledge as a major resource for adaptation strategies to climate change.

It should also be recalled that the enhanced version of the UN mechanism for reducing emissions from deforestation and forest degradation in developing countries, known as REDD-plus, which has been introduced in the global negotiations on climate change as a mitigation strategy, has been accompanied by specific safeguards requiring respect for indigenous peoples’ rights, their full and effective participation and attention to their sustainable livelihoods (UNFCCC COP 2010).

At the same time, a growing number of studies have recognized the role played by indigenous communities’ traditional land management practices in biodiversity conservation. Biodiversity-rich

⁶ The 2030 Agenda provides an integrated framework for development policies grounded on three pillars, economic, social and environmental, and comprising 17 goals (the SDGs) and 169 targets that shall guide international, regional and national development efforts for the next 15 years.

⁷ See indicators 2.3, under SDG 2 and 4.5, under SDG 4.



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terrestrial and marine habitats that are successfully managed outside government-designated protected areas are estimated to be roughly equal in area to the total protected areas (UNESCO 2016). The Convention on Biological Diversity provides for respect for and the preservation and maintenance of knowledge, innovations and practices of indigenous and local communities, and the promotion of their wider application with the approval and involvement of the holders of such knowledge, innovations and practices. It also stipulates that the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices shall be encouraged (art. 8 (j) of the Convention).

As noted by the ILO, progress on the achievement of the SDGs will be conditional upon the promotion of sustainable rural livelihoods (ILO 2016b). Poverty remains a predominantly rural problem,⁸ with agriculture being the largest employer in the world and the sector on which most of the world's poor depend (ILO 2016b, UN 2012b). It is also one of the sectors most affected by the impact of climate change and mitigation and adaptation strategies. Indigenous peoples figure prominently among the key actors of any strategy concerning these areas.

As shall be described in the following chapters, land and natural resources are at the core of the livelihood, ways of life, and culture of the large majority of indigenous peoples in Asia. These people also represent the large majority of the 60 million people worldwide who depend on forests for their subsistence (FPP 2012). In Asia, indigenous peoples inhabit the most fragile ecosystems, ranging from tropical rainforests to high mountain areas, low-lying coasts and flood-pains (AIPP, IWGIA 2010). While their traditional knowledge is a precious resource for climate change adaptation, their close attachment to their territory and dependence on natural resources entails a special vulnerability to the impacts of climate change, which differ for indigenous women and men, and heightens their dependence on mitigation and adaptation measures, necessitating their effective participation in any measures adopted to address them.

⁸ Over 80 per cent of the poor in developing and emerging countries live in rural areas and nearly two thirds of the working extreme poor are employed in agriculture (ILO 2016b).

1.3. Purpose of the study: taking stock and looking ahead

The overall framework constituted by the interlinked global policy agendas described above calls for the building of coherent approaches and policies for reaching their respective goals, which include the promotion and protection of the rights of indigenous peoples as an empowering transversal strategy. In other words, making progress in implementing the 2030 Agenda for Sustainable Development and the Paris Agreement on climate change will also require renewed efforts in addressing indigenous peoples' rights.

To underpin these efforts, the present study takes stock of and provides an overview on national legal and policy frameworks relevant for the promotion and protection of these peoples in Asia, a region where comprehensive information on these issues has been scarce. Up to the present time, research of this nature has largely focused on other regions (see, for example, World Bank 2011, ILO, ACPHR 2009).

With the aim of contributing to closing knowledge gaps concerning laws and public policies regarding indigenous peoples in the region, over the period 2010–2015, the ILO commissioned a number of country studies of varying scope concerning the legal and policy frameworks on indigenous peoples in Bangladesh, Cambodia, India, Indonesia, Malaysia, Nepal, the Philippines, Thailand and Viet Nam. In 2015, it also undertook a study providing an overview, more particularly, on the situation of indigenous peoples in the world of work in a number of selected Asian countries (Dhir 2015). At the same time, studies on the status of indigenous peoples' rights in the Asian countries have been carried out, in recent years, by the Asia Indigenous Peoples Pact (AIPP),⁹ the International Fund for Agricultural Development (IFAD), the Asian Development Bank and the World Bank.

Building on existing research and reports and guided by Convention No. 169 and UNDRIP, the present study seeks to provide a human rights-based overview of national laws and policies regarding indigenous peoples in Asia in four main thematic areas, namely, the identification and recognition of indigenous peoples; consultation and participation; land and natural resources; and public policies on cultural, social and economic rights.

Although it has as its overall reference framework Convention No. 169 and UNDRIP, the study does not attempt to assess or draw conclusions about the conformity of the national legal and policy frameworks with these or other international instruments. Rather, it aims to identify broader gaps and challenges and related policy recommendations towards enhancing the promotion and realization of indigenous peoples' rights as an integral part of fostering inclusive and sustainable development in Asia.

Accordingly, the study aims to inform national efforts mounted for the implementation of the SDGs, and to highlight the key relevance for right-based approaches in this regard. It also seeks to seize the opportunity for enhancing the cooperation and coherence that the SDGs offer to UN agencies in their efforts to support States.

⁹ AIPP is a regional organization founded in 1988 by indigenous peoples' movements comprising 47 member organizations, including six indigenous women's organizations, from 14 countries. For more information, see www.aippnet.org.

1.4. Methodology, scope and limitations

This study is based on a desk review and analysis of national legislation and policies, and relevant reports and country studies that figure in the list of reference provided at the end of the text. The reports and studies that were reviewed and used to prepare the study include the following:

- Published and unpublished ILO country studies on indigenous peoples in Asia and other recent ILO reports on indigenous peoples in the region;
- AIPP studies on indigenous peoples in member countries of the Association of Southeast Asian Nations (ASEAN);
- IFAD country technical notes on indigenous peoples' issues, World Bank and the Asian Development Bank reports (not older than five years), and also other available reports and studies that complement the information base for the report;
- Observations and direct requests by the ILO CEACR related to relevant ILO Conventions, and concluding observations by the UN treaty bodies (not older than five years);
- Reports submitted to the UN Human Rights Council by the Council's Special Rapporteur on the rights of indigenous peoples and other thematic mandates, including the Special Rapporteurs on the right to food, adequate housing, cultural rights and the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

Taking into consideration the information available, the geographical scope of the study covers a selection of countries in South Asia and South-East Asia, namely: Bangladesh, Cambodia, India, Indonesia, the Lao People's Democratic Republic, Malaysia, Nepal, the Philippines, Thailand, and Viet Nam. The study thus covers two sub-regions within each of which situations regarding indigenous peoples share certain communalities. Future research should cover other parts of Asia as well as the Pacific.

Among the countries covered in the study, only Nepal has ratified Convention No. 169, whereas India and Bangladesh have ratified ILO Indigenous and Tribal Populations Convention, 1957 (No. 107). On the other hand, all these countries have ratified UN human rights treaties or ILO Conventions relevant to the issues under review in this study and addressing the current marginalization of indigenous peoples, such as the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).¹⁰

The study aims to provide an overview rather than an exhaustive review of the situation and experiences in the countries examined. It should also be kept in mind that the study is primarily looking at the content of existing laws and policies, while not seeking to establish assessments of their implementation. Nevertheless, implementation challenges and gaps, as reported by other sources, have been included, as appropriate.

¹⁰ Myanmar and Thailand have not ratified the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Malaysia denounced that Convention in 1990.



In many cases the great variety in the scope, quantity and quality of the information available for these countries makes comparisons between them difficult. In addition, it should be clarified that the report refers to a wide range of peoples, groups and communities under the broader category of indigenous peoples. This does not imply, however, that it intends any determinations as to whether a specific group is to be considered as an indigenous people or that all of the groups referred to are necessarily recognized as indigenous peoples in their countries or self-identify as such. The objective was to cover groups that have been referred to in relevant national and international research on indigenous peoples.

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Text boxes have been used throughout the study to recall relevant provisions of Convention No. 169 and UNDRIP, illustrate country examples, or highlight the situation of specific subgroups within the indigenous population, such as indigenous women and children.

The study is divided into four main chapters, corresponding to the thematic areas examined, namely: identification of indigenous peoples; consultation and participation; land and natural resources; and public policies on cultural, social and economic rights, after which some conclusions and related recommendations are presented. The four thematic areas have been selected in the light of their central importance in and for Convention No. 169 and UNDRIP and because of their importance and direct relevance for achieving specific SDGs. The issue of identification and recognition of indigenous peoples is fundamental because, without it, an appropriate dedicated focus on these groups in public policies generally would be hard to achieve.

Table 1. Study's thematic focus areas and related SDGs

Identification of indigenous peoples	Cross-cutting relevance for all SDGs
Consultation and participation	<p>Cross-cutting relevance for all SDGs</p> <p>SDG 1 No poverty</p> <p>SDG 5 Gender equality</p> <p>SDG 8 Decent work and economic growth</p> <p>SDG 10 Reduced inequalities</p> <p>SDG 13 Climate action</p> <p>SDG 16 Peace, justice and strong institutions</p>
Land and natural resources	<p>SDG 1 No poverty</p> <p>SDG 2 Zero hunger</p> <p>SDG 5 Gender equality</p> <p>SDG 8 Decent work and economic growth</p> <p>SDG 13 Climate action</p> <p>SDG 14 Life below water</p> <p>SDG 15 Life on land</p>
Public policies on cultural, social and economic rights	<p>SDG 1 No poverty</p> <p>SDG 2 Zero hunger</p> <p>SDG 3 Good health and well-being</p> <p>SDG 4 Quality education</p> <p>SDG 6 Clean water and sanitation</p> <p>SDG 5 Gender equality</p> <p>SDG 8 Decent work and economic growth</p> <p>SDG 10 Reduced inequalities</p>

2. Identification of indigenous peoples and recognition of their rights

2.1. Concept of indigenous peoples in the Asian context and its relevance

In Asia, the concept of indigenous peoples is often subject to debate and questions. At the time of the adoption of UNDRIP, several Asian governments expressed reservations with regard to the application of the concept in their countries (Erni 2008).¹¹ Similar positions continue to be expressed at the UN or in other international forums. For example, on the occasion of the universal periodic review at the UN Human Rights Council, the representative of Indonesia pledged that country's support for the promotion and protection of the rights of indigenous peoples worldwide, while stating that Indonesia did not recognize the application to it of the indigenous people concept as defined in the UN Declaration on the Rights of Indigenous Peoples (UN 2012c, para. 6.3). Similarly, the representative of the Lao People's Democratic Republic affirmed, during the universal periodic review of his country, that no ethnic group in the country was considered as indigenous and all the 49 ethnic groups were equal (UN 2015b, p.12).

Despite the posting of such reservations by some countries in the region, others are using the concept of indigenous peoples in their national laws and policies and underlining the contributions made by these peoples to the development process. For instance, the Philippines has adopted specific legislation regarding indigenous peoples' rights and the Government has recently declared that, as it begins to implement the 2030 Agenda, governments should continue to engage in dialogue with and listen to the voices of the country's indigenous peoples. In the Government's view, recognition of their rights and aspirations would go a long way towards national unity and equitable, inclusive and sustainable development (Philippines 2015).

Cambodia has adopted a national policy on indigenous peoples. Nepal has ratified Convention No. 169, while for India and Bangladesh the ILO Indigenous and Tribal Populations Convention, 1957 (No. 107), remains in force.¹² Although it is not covered in the present study, it should be noted that Convention No. 107 is also in force for Pakistan. Significantly, the Asian Development Bank has adopted specific safeguards on indigenous peoples,¹³ as has the Asian Infrastructure Investment Bank (AIIB 2016).¹⁴

11 After the adoption of UNDRIP, for example, the representative of Indonesia declared that "the rights in the Declaration [...] did not apply in the context of Indonesia". Based on this understanding, "Indonesia would continue to promote the collective rights of indigenous peoples". Extracts of the statements are available at <http://www.un.org/press/en/2007/ga10612.doc.htm>. Of the countries examined for this report, only Bangladesh abstained during the vote on the adoption of UNDRIP at the UN General Assembly.

12 See more on the national recognition of indigenous peoples and the ratification of Convention No. 169 in the following chapter.

13 According to the Safeguard Policy Statement of the Asian Development Bank: "the term Indigenous Peoples is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees: (i) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; (ii) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; (iii) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and (iv) a distinct language, often different from the official language of the country or region" (ADB 2009, para. 6).

14 The environmental and social policy framework of the Asian Infrastructure Investment Bank contains standards on indigenous peoples and adopts the same understanding of the concept of indigenous peoples as the Asian Development Bank's safeguards (see

A significant number of groups in Asia identify themselves today as indigenous peoples and an indigenous peoples' movement has emerged. It encompasses regional organizations – starting with the Pacific-Asia Council of Indigenous Peoples and the aforementioned AIPP, established in the late eighties – along with numerous national organizations which actively take part in processes at various levels to promote the recognition of their rights, including human rights-related processes, climate change negotiations, discussions on biological diversity conservation, the development and implementation of the 2030 Agenda, and the design of the intellectual property rights regime.

While the engagement of indigenous peoples with international processes has borne fruit in unprecedented ways, for instance, as mentioned above, in the text of the Paris Agreement on climate change, such efforts have so far been less successful at the regional level in Asia. Despite the engagement of the indigenous peoples' movement during the drafting of the ASEAN Declaration on Human Rights, the text does not refer to indigenous peoples, but rather introduces the category of “vulnerable and marginalized groups” (ASEAN, 2013).

The main challenges in Asia with regard to the identification and recognition of certain groups as indigenous peoples in public policies seem thus far to have consisted, on the one hand, in a narrow understanding of the term, which is confined within the experience of European colonization (in other words indigenous peoples as the non-European population of European colonies), to which States have opposed the argument that their entire population is indigenous to the country. Thus, for example, it has been stated that “all Bangladeshis are indigenous peoples who existed in the territory prior to British colonization” (Kingsbury 1998, p. 433). On the other hand, the concept seems to have been associated with a focus on who came first (the notion of historical priority or precedence), that, in the complex context of the migration history of the region, becomes difficult to determine and usually inappropriate (Rehman, Hoffler 2009, Kingsbury 1998).¹⁵

This understanding differs significantly, however, from what the modern concept of indigenous peoples, as has been endorsed in the international standards, actually encompasses. Furthermore, indigenous peoples' rights are sometimes erroneously perceived – and rejected on that basis – as additional rights and privileges for certain groups, rather than the expression of universally applicable human rights and their realization through legitimate special measures.

As has been emphasized in other works, international standards on indigenous peoples' rights are concerned with addressing a social situation rather than establishing a priority based on whose ancestors had arrived in a particular area first (Lee, Tomei 1995, p. 9). The modern concept of “indigenous peoples” covers peoples who, in spite of their diversity and the variety of their historical experiences, share some common characteristics, namely: occupation and use of a specific territory and special attachment to it, as it has a fundamental importance for their collective physical and cultural survival as peoples; cultural distinctiveness, which may include the aspects of language, social organization, religion and spiritual values, modes of production, laws and insti-

the above footnote). The same approach has been adopted by the environmental and social framework of the New Development Bank (NDB 2016).

15 These arguments resonate with similar arguments put forward by African States during the negotiation of UNDRIP. In response, the African Commission on Human and Peoples' Rights has examined the issue and provided some clarification in its report of 2005, affirming the relevance of the concept of indigenous peoples in Africa (ACHPR 2005). Along with these arguments, a concern for the territorial integrity of the State is also raised (see, for examples, the statements made in connection with the adoption of UNDRIP at <http://www.un.org/press/en/2007/ga10612.doc.htm>).

tutions; an experience of subjugation, marginalization, dispossession, exclusion or discrimination; and self-identification, and also recognition by other groups, or by State authorities, as a distinct collectivity (Daes 1996, ACHPR 2005).

Convention No. 169 adopts an inclusive approach and refers to indigenous peoples and tribal peoples, in order to accommodate different local designations and terminology. Likewise, UNDRIP includes under the term “indigenous peoples” those groups referred to as “tribal” in Convention No. 169. Both are equally covered by the international legal standards on indigenous peoples’ rights, regardless of the terminology used at national level to describe them, and enjoy the same set of rights aimed at overcoming the discriminatory practices affecting them (ILO 2013). Self-identification is regarded as a fundamental criterion for the identification of indigenous and tribal peoples.

Table 2. Criteria for the identification of indigenous and tribal peoples under the Indigenous and Tribal Peoples Convention, 1989 (No. 169)

	Subjective criteria	Objective criteria
Indigenous peoples	Self-identification as belonging to an indigenous people.	Descent from populations who inhabited the country or geographical region at the time of conquest, colonization or establishment of present State boundaries. They retain some or all of their own social, economic, cultural and political institutions, irrespective of their legal status.
Tribal peoples	Self-identification as belonging to a tribal people.	Their social, cultural and economic conditions distinguish them from other sections of the national community. Their status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.

Source: ILO 2013, p. 2

In his report of 2013, the UN Special Rapporteur on the rights of indigenous peoples notes that “there are particular groups that distinguish themselves from the broader populations of the Asian countries and that fall within the scope of the international concern for indigenous peoples that has developed throughout the United Nations system” (UN 2013a, para. 6). He then goes on to say that those groups display distinct identities and ways of life and face very specific human rights issues related to histories of various forms of oppression, such as dispossession of their lands and natural resources and denial of cultural expressions (ibid., para.7).

Prior to the adoption of UNDRIP, the Asian indigenous movement itself felt the need for a collective reflection on the concept of “indigenous peoples” and its application to the region. The process led to the identification of common experiences and issues related to their history, identity and collective connection with a territory. In their own words, indigenous peoples in Asia have distinct lifestyles, cultures, customs and community-centric social and political institutions,

profoundly rooted in their histories and territories. Their livelihoods strongly depend on natural resources. They lived in their territories alongside other peoples who, in the course of history, have come to dominate them.

As a result, they have been politically, culturally and economically marginalized, especially in the wake of the formation of nation States. They have been subjected to assimilation policies and continue to suffer from the non-recognition of their customary rights over lands and resources (Erni 2012, p. 325). As for indigenous peoples in other parts of the world, their history of discrimination and marginalization is reflected in the terms used by the other segments of the population to name them, such as “*upajati*” in Bangladesh or “*sakai*” in Thailand, which all carry a derogatory connotation equivalent to “barbarian”, “primitive”, “uncivilized”, or “backward” (AIPP 2010).

Box 1. Identification of indigenous peoples

ILO CEACR has considered that, where communities meet the requirements of Article 1(1) of Convention No. 169, they must enjoy the full protection of the Convention regardless of differences from or similarities to other communities and irrespective of what they are called. (CEACR 2009)

2.2. National patterns of identification of indigenous peoples and recognition of their rights

The situation with regard to the identification of indigenous peoples and the recognition of their rights by the countries examined in this study varies greatly. The relevant laws and policies in some countries are guided by a contemporary understanding of the concept of indigenous peoples (Nepal, the Philippines and, to some extent, Cambodia). In other countries, groups that self-identify as indigenous peoples as such are given a special legal status by the Constitution, although they are not referred to as “indigenous peoples” but by other denominations.

Sometimes, indigenous peoples are the object of special legislation or are specifically referred to in certain laws, most often laws governing land rights. In other cases, their rights have been upheld by national courts or national human rights commissions and they have also been recognized as collective legal subjects. Moreover, as will be discussed in more detail in the following chapters, in most of the countries under review, national strategies for development and poverty reduction make reference to them and – although this occurs in much fewer cases – may envisage some specific and targeted actions.

This does not necessarily entail, however, recognition of their rights. In fact, as will be shown below, the degree of recognition of indigenous peoples’ rights varies significantly, particularly in terms of whether such recognition is accorded at an individual or collective level. There are also some inconsistencies across sectoral legislation, on the one hand, and between laws and policies, on the other.

In countries like Bangladesh, India, Indonesia, and Malaysia, indigenous peoples were given special legal status during the colonial era. It was, indeed, common practice for the colonial administrators to establish special laws and policies concerning non-majority groups, which included provision for the establishment of scheduled areas, frontier zones and other special arrangements (Kingsbury 1998). This approach was developed further with the formation of modern States and the adoption of constitutional guarantees and special legal provisions concerning certain groups.

In India, for example, the Constitution recognizes “scheduled tribes”.¹⁶ Articles 342 and 366 define them as “tribes or tribal communities or parts of or groups within such tribes or tribal communities” specified, by public notification, by the President to be deemed to be scheduled tribes for the purposes of the Constitution. The Constitution confers on them a special legal status, including reservation of seats in the legislative assemblies of the states and municipalities, along with special arrangements for the administration of their territories in accordance with the provisions of the Fifth and Sixth Schedule of the Constitution.



¹⁶ The category of “scheduled tribes” is an administrative category used for the purpose of administering certain specific constitutional privileges, protection and benefits recognized in favour of specific section of peoples, historically considered “disadvantaged and backward” (ILO, AIPP 2010, p. 14).

Although no official criteria have been developed for the purpose of identifying scheduled tribes, in practice the identification occurs on the basis of the following characteristics: “(i) primitive traits; (ii) distinctive culture; (iii) geographical isolation; (iv) shyness of contact with the community at large; and (v) backwardness” (ILO, AIPP 2010, p. 14). According to a study by the ILO and AIPP, the category of “scheduled tribes” would include mostly “indigenous peoples”, although some ethnic groups which may also be regarded as indigenous peoples are not included. The list of scheduled tribes is not, however, a closed list and additional claims for inclusion as well as decisions on inclusions and exclusions from the list may be made in accordance with a dedicated procedure (ILO, AIPP 2010).

In Malaysia, the Federal Constitution recognizes what it refers to as the “natives” of Sabah and Sarawak in article 161, providing for them special rights in public employment, in the form of quotas, together with scholarships and educational benefits. The same recognition is, however, not accorded to the Orang Asli, the “aboriginal” peoples of Peninsular Malaysia, who are covered by article 160. This provision defines an “aborigine” as “an aborigine of the Malay Peninsula” and leaves the task of providing further specifications to the 1945 Aboriginal Peoples Act.

The Act and the Statement of Policy Regarding the Administration of the Orang Asli of Peninsular Malaysia have been regarded as generally paternalistic and assimilationist in their approach to the aborigines (JOAS 2015, AIPP 2015a). The Human Rights Commission of Malaysia has noted that, based on the criteria of Convention No. 169, indigenous peoples in Malaysia would include both the aborigines of Peninsular Malaysia and the natives of Sabah and Sarawak (Dhir 2015). In a recent statement made at the UN, the representative of the Government of Malaysia declared that the rights of indigenous peoples are a priority for the Government and affirmed that Malaysia remains committed to its obligation to implement the United Nations Declaration on the Rights of Indigenous Peoples (Malaysia 2015).

Regarding Bangladesh, the Constitution adopted at the time of the country’s independence from Pakistan in 1971 did not reinstate the special constitutional status that was once accorded to those who are regarded as the country’s indigenous peoples (Roy 2009). Rather, the Constitution recognizes “tribes, minor races, ethnic sects and communities” and calls upon the State to take steps to protect and develop their “unique local culture and tradition” (art. 23). It also refers to a “backward section of citizens”¹⁷ in various articles, thus laying the ground for the adoption of positive measures in favour of indigenous peoples with a view to addressing their situation of disadvantage and ensuring effective equality with the rest of the population (Roy 2009). “Backward segments of the population” is in fact the expression often used in official documents, along with “tribal peoples”, to refer to the indigenous peoples of the country (Enri 2012).

The indigenous peoples of the Chittagong Hill Tracts, known as “Pahari” (hill people) or “Jumma” (from shifting, or *jum*, cultivation), are furthermore the object of special legislation, following the 1997 Chittagong Hill Tracts Peace Accord. Conversely, the indigenous peoples of the plains, generally known as “Adivasi”, are only referred to in the 1950 East Bengal State Acquisition and Tenancy Act, which governs land administration in the plains, and therefore enjoy a much lower degree of recognition and protection (Roy 2009).

It should be noted, however, that the national sixth five-year development plan, with the theme “Accelerating growth and reducing poverty”, includes the implementation of UNDRIP and the ratification of Convention No. 169 among the actions to be considered. In 2013, the Government declared that Bangladesh’s consideration of the ratification of Convention No. 169 needed to be contextualized within the parameters of the Constitutional provisions and that, in the meantime, the Government, along with its social partners, would continue to implement the obligations under ILO Convention No. 107, to which Bangladesh was a party (UN 2013b, p. 3).¹⁸

Table 3. Overview of indigenous population in the countries under review

Country	Common external designation	Number of ethnic groups	Percentage of total national population
Bangladesh	Tribal peoples, Pahari, Jumma, Adivasi, ethnic groups and minorities	45	1.2–2.5 %
Cambodia	Indigenous minorities	19–21	0.9–1.4 %
India	Scheduled tribes, Adivasi	622–635	8.3 %
Indonesia	Masyarakat Adat	> 700	20–29 %
Lao PDR	Ethnic minorities	ca 200 (49 officially recognized “ethnic minorities”)	35–70 %
Malaysia	Natives, Orang Asli, Orang Asal	97	12 %
Myanmar	Ethnic minorities	135	30–40 %
Nepal	Indigenous nationalities, Adivasi, Janajati	> 80 (59 recognized “indigenous nationalities”)	37.1 %
Philippines	Indigenous peoples, indigenous cultural communities	110 officially recognized indigenous peoples	10–15 %
Thailand	Ethnic minorities, Hill tribes, Hill/Mountain people	> 50 (10 officially recognized “hill tribes”)	1.5 %
Viet Nam	Ethnic minorities	> 90 (43 officially recognized “ethnic minorities”)	13.8 %

Adapted from AIPP and IWGIA 2010, p. 6.

¹⁸ On the same occasion, the Government stated that, in accordance with the Constitution, there were no “indigenous minorities” or “groups” in Bangladesh and that all citizens of the country were indigenous to the land (UN 2013b, p. 5).

A constitutional form of recognition is also found in Indonesia. As a legacy of the country's colonial history, the category of "*masyarakat hukum adat*" or "*masyarakat adat*",¹⁹ in other words communities governed by customs or customary law societies, has persisted (AIPP 2015b). The national constitution, as amended in 2000, recognizes customary law societies and provides for respect of their customary rights "as long as they still exist and are in accordance with the society's development" (art. 18). Likewise, in article 28, it recognizes their cultural identity, but respect for their identity is ensured only so long as it is in line with "progress and civilization" (IFAD 2012a).

In 2003, the Constitutional Court recognized that indigenous peoples have legal personality as a collectivity. A further decision by the same court in 2013, recognizing their customary rights over forested areas, has been considered a milestone for the advancement of the recognition of indigenous peoples' rights in the country (see more on this in chapter 3 below) (AIPP 2015b). Provisions concerning these peoples are found in various pieces of legislation, including the Basic Agrarian Law and the Forestry Act, but a comprehensive bill on the recognition and protection of indigenous peoples' rights has been pending in the Parliament since 2011 (Dhir 2015).

A different approach is followed by those countries that, after independence, were particularly concerned about building national unity and securing their territorial integrity, with the result that their constitutions do not confer a special status on any of the ethnic groups forming their population but, rather, insist on the principle of unity and equality between all ethnic groups (UN 2003, Kingsbury 1998). In these countries, there is recurrent reference to the category of "ethnic minorities", rather than tribal peoples or communities. The focus on equality between all ethnic groups has been pursued, in many cases, at the expense of respect for the cultural identity and integrity of minority groups.

The Constitution of the Lao People's Democratic Republic, for example, affirms the "multi-ethnic" nature of the State and recognizes that all ethnic groups have the right to protect, preserve and promote their customs and cultures, without discrimination. The State is, therefore, called upon to promote equality among all ethnic groups and, to this end, to implement every measure needed gradually to develop and upgrade the social and economic levels of all ethnic groups (art. 8). To date, 49 ethnic groups have been officially recognized.

A growing awareness of the ethnic and geographical dimensions of the country's poverty profile has triggered a particular focus on ethnic minorities in the mountainous regions under the national social and economic development plans (OECD 2013, AIPP 2015c). At the same time, however, the design and implementation of the related measures proceed, reportedly, without consideration or respect for their identities and traditional lifestyles, including by means of forced resettlement programmes (see further details in chapter 4 below) (IFAD 2012b).

The Ethnic Minority Policy²⁰ provides the overall framework for the Government's action to improve the living conditions of ethnic minorities, focusing on improving access to services and eradicating discrimination, whereas the Ethnic Minority Committee under the National Assembly

19 The Alliance of Indigenous Peoples of the Archipelago (AMAN – the indigenous peoples' organization of Indonesia) uses the term "*masyarakat adat*" to refer to the indigenous peoples of Indonesia (AIPP 2015b).

20 1992 Resolution of the Party Central Organization concerning Ethnic Minority Affairs in the New Era (Erni 2012).

has been tasked with drafting and advising on proposed legislation concerning ethnic minorities and overseeing the implementation of development plans (Erni 2008, IFAD 2012b).

Box 2. Cultural diversity

Respect for indigenous peoples' distinct identities and cultural integrity is one of the cornerstones of the modern international legal regime on indigenous peoples' rights, as enshrined in Convention No. 169 and UNDRIP.

Culture is a living process, historical, dynamic and evolving. It encompasses all manifestations of human existence, including, among other elements, ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, methods of production or technology, traditional activities, such as fishing or hunting, natural and human-caused environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express the meaning they give to their existence, and build their worldview representing their encounter with the external forces affecting their lives (CESCR 2009, CCPR 1994).

The 2030 Agenda for Sustainable Development recognizes cultural diversity as a crucial enabler of sustainable development (para. 36).

Following an analogous approach, the Constitution of Viet Nam proclaims the “multinational” character of the State and enshrines the principle of equality between all the 54 ethnic groups constituting its population. It recognizes the right of every ethnic group to use its own language and system of writing, to preserve its national identity and to promote its customs, habits, traditions and culture, and places upon the State the obligation to provide the conditions for the development of all ethnic minorities (art. 5). The Government has adopted a number of specific programmes targeting ethnic minorities in order to bridge existing social and economic gaps between them and the rest of the population. It has also established two dedicated bodies to deal with ethnic minority issues, namely the National Assembly’s Council on Ethnic Minorities and the ministerial Committee for Ethnic Minority Affairs (ILO 2015a). The policies adopted have, however, been seen to be aimed at integrating ethnic minorities into mainstream society rather than enabling them to strengthen their own institutions (see further details in chapter 4 below) (IFAD 2012c).

As far as Thailand is concerned, the situation is different, as neither the Constitution nor the legislation refers to indigenous peoples or ethnic minorities, as do those of neighbouring countries. The 2007 Constitution referred instead to “traditional communities”. The new Constitution adopted in 2016 contains a reference to “Thai people of different ethnic groups” and recognizes their right “to live voluntarily and peacefully without disturbances in the society according to their culture, custom and traditional ways of life, insofar as such livelihood is not contrary to public order or good morals of people, or does not harm the security of the State or health” (art. 70).²¹

²¹ Unofficial translation by the International Institute for Democracy and Electoral Assistance (IDEA) (Australia), International Commission of Jurists (Thailand) and the Office of the United Nations Resident Coordinator in Thailand (Thailand), June 2016.

As a result of the engagement of indigenous peoples' organizations in the constitutional drafting process, an earlier draft of the Constitution explicitly recognized indigenous peoples, but this reference was later dropped (IWGIA 2016). Since the 1950s, a number of policies and programmes targeting what are referred to as "hill tribes" have been adopted which, while aimed at improving their living conditions, have also been directed at integrating indigenous peoples into Thai society, including by eradicating their shifting cultivation and resettling them in the lowlands (Erni 2008). Nine so-called "hill tribes" are officially recognized, and this ignores the indigenous groups living in the southern and north-eastern districts of the country (IWGIA 2016). In 2010, the Government adopted two dedicated resolutions to restore the livelihoods of the Chao Ley and Karen peoples (see further details in chapter 3 below). In 2016, the Government noted the recommendation made to Thailand in the framework of the universal periodic review that it ratify Convention No. 169 (UN 2016b).



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The Constitution of Cambodia refers to "Khmer citizens", without making distinctions of any sort. The expression has, however, been interpreted as covering the whole population of the country without denying the existence of different ethnic groups within it (Erni 2009).²² In fact, "indigenous (ethnic minority) communities" (*sahakom chuncheat daoem pheak tech*) have been recognized in the Land Law of 2001, which provides for the recognition of communal land rights for indigenous communities, and the Forest Law of 2002. According to article 23 of the Land Law, an indigenous community is "a group of persons whose members show ethnic, social, cultural, and economic uniqueness, conduct their ways of life according to their traditions, and cultivate the lands that they occupy in accordance with their traditional rules of collective use" (art. 23).

In 2001, the Department of Ethnic Minorities Development was created under the Ministry of Rural Development, with the task of designing development strategies and conducting related research concerning those groups (Lasimbang, Luithui 2007). More recently, the 2009 National Policy on the Development of Indigenous Peoples, which has replaced the older policies on ethnic minority development in North-Eastern Cambodia and the development of "highland peoples", refers to "*chuncheat daoem pheak*

²² Article 31.2 of the Constitution reads as follows: "Khmer citizens shall be equal before the law, enjoying the same rights and freedom and obligations regardless of race, color, sex, language, religious belief, political tendency, national origin, social status, wealth or other status. The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with the law".

tech”, literally indigenous ethnic nationalities or minorities, which has been considered by some as equivalent to the international concept of “indigenous peoples” (IFAD 2012d, Lasimbang, Luithui 2007, Erni 2008). The National Policy recognizes 24 distinct indigenous groups living in 15 provinces.

The Philippines has recognized the rights of indigenous peoples in a comprehensive manner, with the adoption in 1997 of the Indigenous Peoples Rights Act. Prior to that, the Constitution had already recognized “indigenous cultural communities”. Article XII, section 5, of the Constitution recognizes the right of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being.

As for Nepal, the ratification by the country of Convention No. 169 in 2007 has been regarded as one of the most strategic and visible outcomes of the indigenous peoples’ movement so far (Roy 2016, p. 5). In 1997, the Government recognized for the first time the concept of “indigenous nationalities”, or Adivasi-Janajati (ILO 2009). The National Foundation for the Development of Indigenous Nationalities Act, 2002 provides a definition of “indigenous nationalities” as those “ethnic groups or communities that have their own mother tongue and traditional customs, distinct cultural identity, distinct social structure and written or oral history of their own” (UN 2009, para. 14). Under this Act, 59 indigenous nationalities have been recognized, although the list has been contested and a high-level task force established to revise the schedule of Adivasi-Janajati (UN 2009, Roy 2016, CEACR 2016a).

Indigenous nationalities have now also been recognized at the constitutional level. The 2015 Constitution states that Nepal is a multilingual, multireligious and multicultural nation (art. 3) and provides for affirmative action in favour of historically marginalized or disadvantaged groups, notably indigenous peoples, including the inclusion of indigenous representatives in legislative bodies and the establishment of an Adivasi-Janajati Commission (Dhir 2015). As observed by Roy, the Constitution does not, however, acknowledge the historical context of exclusion, discrimination and marginalization suffered by the Adivasi-Janajati²³ and omits to refer to their right to maintain, develop and preserve their political, economic and social institutions and their right to lands and natural resources (Roy 2016).

2.3. Conclusions

While a broader acceptance and shared understanding of the concept of indigenous peoples across the Asian region are yet to emerge, many countries have in fact moved ahead towards identifying and recognizing indigenous peoples among their national populations. This action has often been motivated by their respect for and positive appraisal of ethnic diversity, their desire to remedy historical injustices, and concerns for social cohesion and inclusiveness. The overall picture, however, remains varied.

²³ The preamble to the Constitution makes generic reference to the discrimination and oppression perpetrated upon the people of Nepal (Roy 2016, p. 16).

Nepal, the Philippines and, to some extent, Cambodia stand out in the region, pursuing approaches reflective of a contemporary understanding of the concept of indigenous peoples that is based on respect for cultural integrity and recognition of their collective identity and attachment to a territory. India has put in place an extensive legal and policy framework targeting its scheduled tribes, while Bangladesh has also put in place a number of important legal measures seeking to improve the situation and rights of the groups concerned. In other countries, the courts and national human rights commissions have started to play a proactive role in recognizing and protecting the rights of indigenous peoples, as is the case in Indonesia and Malaysia.

Nevertheless, numerous policy and protection gaps remain in all the countries examined and the effective implementation of existing measures is a common challenge. Addressing these gaps and challenges will be essential for ensuring that indigenous peoples – which are among the most marginalized and disadvantaged segments of national populations in Asia – do not fall further behind and that they benefit from development processes that are respectful of their rights, cultures and aspirations. While the provisions guiding the identification of the concerned peoples set out in Convention No. 169 are formulated in a flexible way, accommodating local designations and terminology, shortcomings in identifying and recognizing indigenous peoples place serious limitations on the full promotion and protection of their rights through appropriate coherent and coordinated legal and policy frameworks.

In this context, there is room for building a stronger regional and national ownership and common understanding of the concept of indigenous peoples, the scope and content of related international standards, and the added value of targeted attention to indigenous peoples and their rights when striving for inclusive development and environmental sustainability. Awareness raising, participatory research and assessments and dialogue among all stakeholders concerned, within and across countries in the region, can assist in moving these debates and policy development forward and preparing the ground for new initiatives to strengthen national frameworks for indigenous peoples' rights and development. Such dialogue should be inclusive and should bring together relevant government bodies, indigenous peoples, workers' and employers' organizations, national human rights institutions and other relevant stakeholders. Future policy dialogue and interventions should more clearly address the gender issues and the rights of indigenous women and indigenous persons with disabilities.

3. Consultation and participation

3.1. Exploring existing approaches to consultation and participation

The rights of indigenous peoples to participate in decision-making and to be consulted on matters that may affect them are the cornerstones of Convention No. 169 and are also central to UNDRIP.²⁴ The countries examined for the purpose of this study display a varying degree of recognition and practical realization of these rights. This clearly mirrors the diverse forms of legal recognition of indigenous peoples, as explored in chapter 2 above.



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As will be illustrated below, experiences from the countries under review include various forms of autonomy arrangements, the establishment of advisory bodies with different scope and degree of responsibilities, positive measures – in the form of mandatory or quota systems of representation – designed to promote participation in public affairs, and specific provisions for the consultation of indigenous peoples on specific matters. Only in very few cases have specific procedures of general scope for the participation and consultation of indigenous peoples been established or envisaged. These experiences are often situated in an overall context of limited space for public participation, either because of general restrictions on civil and political liberties (UN 2016c), or because of predominant top-down models of decision-making.

24 For more detailed information on consultation and participation under Convention No. 169, see ILO 2013.

Box 3. Rights of indigenous peoples to consultation and participation

Convention No. 169 and UNDRIP recognize the rights of indigenous peoples to consultation and participation. Consultations with indigenous peoples should take place with regard to measures that may affect them directly, including development projects. The aim of consultations is achieving agreement or consent.

Convention No. 169 provides that governments shall consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly. The consultations shall be undertaken in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures (Art. 6).

According to Convention No. 169, States shall establish means by which indigenous peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making, in elective institutions and administrative and other bodies responsible for policies and programmes which concern them (Art. 6.1 (b)). States shall also establish means for the full development of indigenous peoples' own institutions and initiatives (Art. 6.1 (c)).

UNDRIP affirms that States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures which may affect them (Art. 19). It also states that indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions (Art. 18).

Countries such as Nepal and the Philippines that have officially recognized indigenous peoples, provide for specific procedures to ensure the participation and consultation of these peoples. The newly adopted Constitution of Nepal stipulates that special arrangements have to be made to ensure the participation of indigenous peoples in decision-making concerning them (art. 51 (j)). It also provides for the reservation of seats in legislative bodies and other offices, including the village development committees, and provides for the establishment of an Adivasi-Janajati Commission (CEACR 2016a).²⁵ The Commission, whose members are appointed by the President, is entrusted with the tasks, among others, of studying the overall situation of indigenous peoples and formulating recommendations with regard to areas where policy, legal and institutional reforms may be needed; formulating national policies and programmes for the development of indigenous peoples and eradication of discrimination; and monitoring the implementation of relevant laws (CEACR 2016a).

In the Philippines, pursuant to the Indigenous Peoples Rights Act, a similar body has been created, namely the National Commission on Indigenous Peoples, an independent body under the Office of the President composed of commissioners belonging to indigenous peoples. The Commission, as stated in the Act, is the primary government agency responsible for the formulation and implementation of policies, plans and programmes to promote and protect the rights and well-being of the indigenous cultural communities and indigenous peoples and the recognition of their ancestral domains, together with the rights thereto (section 38). The Act also provides for the mandatory representation of indigenous peoples in policy-making bodies and other local legislative councils (section 16).

When it comes to the actual implementation of the provision, however, it has been observed that the appointed representatives are often not chosen by indigenous peoples themselves and are, rather, selected on the basis of favour found with the local government authorities (AIPP 2015d). At the general level, the Indigenous Peoples Rights Act recognizes the right of indigenous peoples to self-governance and self-determination (section 13), provides for the support of autonomous regions (section 14) and recognizes indigenous peoples' right to participate in decision-making (section 16). Furthermore, the Act provides for the specific consultation of indigenous peoples on matters concerning them, requiring their free, prior and informed consent prior to the granting of any licence, lease or permit for the exploitation of natural resources affecting their interests or their ancestral domains (sections 46 and 59), relocation (section 7) and access to biological and genetic resources and indigenous peoples' traditional knowledge, among other matters.²⁶ In 2012, the National Commission on Indigenous Peoples adopted revised guidelines on free, prior and informed consent and related processes.

In Bangladesh, the Chittagong Hill Tracts Accord of 1997 has sought to strengthen the self-government system of the region. It has resulted in the adoption of various laws, including the 1998 CHR Regional Council Act, the 1998 Hill District Council (Amendment) Act, the 2000 Chittagong Hill Tracts Land Disputes Resolution Commission Act and the 2003 Chittagong Hill Tracts Regulation (Amendment) Act, and the creation of three new bodies, namely, a regional council for the Chittagong Hill Tracts with a two-third indigenous majority and an indigenous chair, which is mandated, among other tasks, to supervise the functions of the district and other local government bodies; a separate Ministry of Chittagong Hill Tracts Affairs, which is tasked with dealing with all affairs concerning the Chittagong Hill Tracts; and the Commission on Land, seven of whose nine members are indigenous, with the function of dealing with land-related disputes (Roy 2009). With regard more generally to the participation of indigenous peoples both from the Chittagong Hill Tracts and the plains, it is worth mentioning the establishment in 2010 of the Parliamentary Caucus on Indigenous Peoples (see box 4 below).

²⁶ A study conducted by the Philippines Task Force for Indigenous Peoples' Rights on free, prior and informed consent has identified a number of weaknesses in the current application of the provisions of the Indigenous Peoples Rights Act concerning consultation and such consent, consisting notably in disrespect for indigenous peoples' customary law and values, various forms of manipulations of the process and bribery of the community's leaders (AIPP 2015d).

Box 4. Bangladesh's Parliamentary Caucus on Indigenous Peoples

The Parliamentary Caucus was established in 2010 with the aim of fostering the realization of the rights of indigenous peoples in the country, combining advocacy within and outside the Parliament and consultations with indigenous peoples. Its work is aligned with the five-year plan (2011–2016), with the theme “Accelerating growth and reducing poverty”, which emphasises the need to ensure these peoples’ rights and preserve their cultural identity.

It is composed of members of Parliament of different political parties who either belong to indigenous communities or have a long-standing record of support for the recognition of indigenous peoples’ rights. At present, the Caucus counts 36 members, of whom only four are from indigenous communities.

From 2012 to 2014, the Caucus held consultations with indigenous peoples, local government representatives, traditional leaders, parliamentarians and legal experts with a view to drafting a comprehensive law on the promotion and protection of indigenous peoples’ rights. The bill has been finalized and has been submitted to Parliament in December 2016, and is currently awaiting consideration.

Members of the Caucus are elected members of the Parliament, and not themselves representatives of indigenous peoples. This condition has, sometimes, given rise to conflicts of interest between the political agendas of their respective parties and indigenous peoples’ agendas (Tripura 2015).

Self-government arrangements are also found in India. As noted earlier, the Constitution of India includes various provisions for the so-called scheduled areas, tribal areas and tribal states (art. 244, schedules V and VI). It also grants special protection to the states of Nagaland and Mizoram (arts 371A and 371G). Nevertheless, these provisions do not cover the entire indigenous population of the country. Moreover, it has been noted that, in practice, implementation of these provisions has not been without difficulties stemming from unresolved contradictions between the multiple state structures, on the one hand, and traditional institutions, on the other, at the village and community levels (ILO, AIPP 2010).

Where participation in public affairs is concerned, the Constitution of India provides for reserved seats for scheduled tribes in the elective bodies at federal, national and local levels, to ensure their representation proportionally to their population. With regard to the effectiveness of measures of this kind, however, it has been underscored that, where lower structures are in conflict or competition with the traditional structures, the scheduled tribes’ representatives become part of the dominant structures, effectively weakening their representative character (ILO/AIPP 2010, p. 75). Provisions for the consultation of concerned indigenous peoples are found in sectoral legislation, such as the 2006 Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act (hereinafter referred to as the Forest Rights Act), which requires consent from the village assembly (*gram sabhas*) for any handover of forest land, and the 2013 Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, whose purpose is to ensure a participative, informed and transparent process for land acquisition (preamble).²⁷ These laws will be discussed further in the following chapters.

The Federal Constitution of Malaysia provides that persons who “are representative of racial minorities or are capable of representing the interests of aborigines” may be appointed by the

²⁷ India has also established various bodies with diverse responsibilities concerning scheduled tribes’ affairs. These include the Ministry of Tribal Affairs, created in 1999, the National Commission for Scheduled Tribes, established in 2004, and the Committee on the Welfare of Scheduled Castes and Scheduled Tribes, whose creation dates back to 1968, among others. For more details, see ILO, AIPP 2010.

King as members of the Malaysian Senate (art. 45.2). Similar provisions are incorporated in the constitutions of Sabah and Sarawak, regarding the membership of the state legislative assemblies. To date, only an Orang Asli representative has been appointed as senator; no representatives of the groups categorized as “natives” have been appointed either at federal or state level (JOAS 2015).

To a certain extent, forms of self-government may be found at local level. In Sabah, for example, the 1951 Rural Administration Ordinance institutionalized the native chiefs and headmen as part of the administration at village level. The same task was performed in Sarawak by the 2004 Community Chiefs and Headmen Ordinance. These are state-appointed representatives who, in many cases, have replaced the traditional leaders appointed by the community’s members, eroding the traditional governance systems of the peoples concerned and reducing, also, the scope of local self-governance (JOAS 2015). As for the aborigines of Peninsular Malaysia, the paternalistic approach underpinning the 1945 Aboriginal Peoples Act means that there are no provisions for the participation and the consultation of the peoples concerned (AIPP 2015a).

Concerning Indonesia, Act 32/2004 on Regional Government regulates administration at local level. This Act builds on previous legislation, namely Act 22/99 on Regional Government, which had restored traditional village institutions. The Act recognizes the existence of traditional villages of indigenous peoples and provides that customary law may be applied in the election of village heads (art. 202 (3) of Act 32/2004) (ILO 2012a). The Act, however, reiterates the constitutional provision in article 18 that subordinates respect for the customary rights and identity of the customary law societies to “society’s development” (see chapter 1 above). In addition, mandatory consultation with “affected communities” is contemplated under the 2012 Law No. 2 on Acquisition of Land for Development for Public Purposes, and related Presidential Regulation No. 71/2012 (UN 2013c).

Cambodia does not have any specific legal provisions concerning the participation and the consultation of indigenous peoples. Nevertheless, the 2009 National Policy on the Development of Indigenous Peoples calls upon relevant ministries to encourage indigenous peoples’ participation in the development, monitoring and evaluation of policies at all levels and recognizes their right to decide on their own economic, social, and cultural development (chapter 1, General Policy, clause 9).

In addition, the 2002 Forest Law provides for “full public participation” in all government decisions that may affect local communities, their livelihoods and forest resources (art. 4). No specific procedure has so far been established, however, to ensure that indigenous peoples are consulted and participate in decision-making that affects them (ILO 2015b). Furthermore, the Land Law recognizes indigenous peoples’ traditional authorities or leaders and entrusts them with the task of managing the use of communal lands and dealing with the administrative authorities in this matter (art. 26.2). In certain communities this position has, however, been taken over by government-appointed persons (ILO 2015b).

In the Lao People’s Democratic Republic, the Committee for Ethnic Minorities of the National Assembly is responsible for ethnic minority affairs throughout the country, oversees the implementation of social and economic development plans and makes recommendations on draft legislation concerning ethnic minorities, among other tasks (IFAD 2012b). A similar institutional

arrangement is found also in Viet Nam, where there are two dedicated bodies dealing with ethnic minority issues, namely the National Assembly's Council on Ethnic Minorities and the ministerial Committee for Ethnic Minority Affairs.



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Under the country's 2011–2020 REDD-plus action programme, the latter is entrusted with encouraging ethnic minorities' participation in REDD-plus processes. In fact, the inclusion of the Committee for Ethnic Minority Affairs in the REDD-plus steering committee, together with the creation of an institutional architecture open to civil society participation, including by indigenous peoples' organizations, has been hailed as an unprecedented sign of Viet Nam's commitment to participatory approaches. Thus far, however, the mechanisms established have failed to ensure the full participation of indigenous peoples (Errico 2016).

More generally, the new Land Law of 2013 has provided for “consultation with the people” on forest and land-use planning (art. 43). The Grassroots Democracy regulations also contemplate citizens’ involvement in decision-making but implementation thus far has been weak (Pham et al. 2015). As for Thailand, the recently adopted Constitution provides for consultation with and participation of people with regard to the national strategy for sustainable development (section 65).

3.2. Conclusions

Most countries reviewed in the study have tackled the issue of local governance institutions relating to indigenous peoples, although the scope and approach of existing arrangements vary considerably. In some countries, the traditional institutions of indigenous peoples are recognized by law and given specific roles or responsibilities within the state structure, at the local level. Sometimes these responsibilities are specific to certain matters, such as managing communal lands (as for example in Cambodia), while in other cases indigenous villages as such are recognized as local government units (for example in Indonesia).

In addition, a number of countries have broader self-governing or autonomy arrangements at the local or regional level (such as in Bangladesh, India, Malaysia or the Philippines). In some countries traditional indigenous institutions and local state institutions, such as local or municipal councils, coexist (for example in Cambodia and India). Attention has been drawn to contradictions that exist between traditional institutions and formal structures which end up weakening, in practice, existing self-government arrangements.

Another type of measure used in the region to promote the participation of indigenous peoples in public affairs is the use of quotas for indigenous members in elective bodies, such as national parliaments or elective bodies at the provincial or local levels, which is the case, for example, in India, Malaysia and Nepal. In addition, several countries have established dedicated national commissions responsible for indigenous peoples’ affairs, the membership of which includes indigenous peoples themselves (India and the Philippines). Thus, in Nepal, the establishment of such a commission is envisaged by the country’s new Constitution of 2015, although it has not yet been set up. The representativeness of indigenous members in State-established bodies at national or local levels has sometimes been questioned, because of the selection procedures or owing to conflicts of interest with political agendas.

While measures to ensure the participation of indigenous peoples through representation in elective bodies and in commissions responsible for indigenous peoples’ affairs constitutes a significant measure, they cannot, however, take the place of dedicated procedures for consultations between the State and indigenous peoples on matters that may directly affect these peoples, through their own representative institutions. Such matters may be legislative or administrative measures, including decisions concerning development projects with impacts on indigenous peoples.

Some of the countries covered by the study have legal provisions for public consultation (for example Cambodia, Thailand and Viet Nam), which are unlikely to provide sufficient attention and guarantees relating to the rights and interests of indigenous peoples. Others have provisions

for dedicated consultations with indigenous peoples regarding specific issues, for example the consultation requirement contained in India's Forest Rights Act. In the Philippines, the Indigenous Peoples Rights Act provides that the Government may not issue licences or permits for the exploitation of natural resources unless a consultation process in line with the Act has taken place, and the National Commission on Indigenous Peoples issues a certification in this regard. While such examples stand out positively, the overall picture in the region is characterized largely by a lack, in most countries, of dedicated mechanisms and procedures for consultations with indigenous peoples as envisaged in international standards.

At the same time, there is a growing realization that, when poverty reduction efforts lack the participation of the concerned people, this has led to ill-suited solutions, and this realization may open spaces for adjusting current approaches and practices. The recent attention to indigenous peoples embodied in global policy agendas and policies of major development stakeholders could further contribute to this trend.

Nevertheless, in order to achieve a paradigm shift, considerable attention by policymakers to dedicated mechanisms for consultation will be needed in order to make progress on this issue. This is especially important in view of the current very low levels of participation of indigenous peoples, which is both a root cause and consequence of the situation of marginalization in which their communities tend to find themselves. Addressing lack of participation has a key role to play in preventing conflict and promoting social cohesion, dialogue and consensus. Future efforts to enhance indigenous peoples' participation will require a specific focus on ensuring equal participation of indigenous women.

4. Land and natural resources

4.1. Significance of land and natural resources for indigenous peoples in Asia

The vast majority of indigenous peoples in Asia depend on access to land and natural resources for their livelihood. The indigenous peoples of the Philippines, for example, are mainly engaged in a mix of activities including shifting cultivation in the highland regions, sedentary cultivation of rice, corn and vegetables, hunting and gathering in the forests, livestock raising, fishing along the coastal areas and rivers and producing and trading local handicrafts (IFAD 2012e).



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In the Lao People's Democratic Republic, many indigenous communities live in forested areas and forest resources thus represent an important component of their livelihood (AIPP 2015c). Likewise, it has been estimated that, in Cambodia, forest resources and forest-based activities such as the collection and harvesting of non-timber forest products, provide between 20 and 50 per cent of the income of forest-dependent communities (Savajol, Chan, Yep 2012). In Viet Nam too, non-timber forest products play a key role in these peoples' livelihood as a source of food, medicines, fodder and building materials. They represent 15–25 per cent of household income in forest areas (Nguyen 2006).

In India, according to 2011 statistics, among workers from scheduled tribes 34.5 per cent are cultivators and 44.5 per cent agricultural labourers (Dhir 2015). In Bangladesh, it is estimated that 40,000 indigenous families are engaged in shifting cultivation in the Chittagong Hill Tracts (AIPP 2010). Besides playing a crucial role in the livelihood of indigenous peoples, land and natural resources also represent an integral part of these peoples' cultural identity and social organization (AIPP 2010, ILO 2009). Their special attachment to their traditional territories is, in fact, a distinguishing feature of indigenous peoples.

As articulated in Convention No. 169, the territories that indigenous peoples occupy and otherwise use have a special importance for their cultures and spiritual values. At the same time, their traditional activities, including shifting cultivation, hunting, gathering and fishing, are important factors in the maintenance of their cultures and their economies and development (arts. 13 and 23).

Box 5. Rights of indigenous peoples to land and natural resources

Convention No. 169 and UNDRIP recognize the special relationships that indigenous peoples have with their territories and contain specific provisions concerning indigenous peoples' rights to lands and natural resources.

Part II of Convention No. 169 on land covers aspects related to: recognition of rights of ownership, possession and use of lands (art. 14.1); special attention to the situation of nomadic peoples and shifting cultivators (art. 14.1); adoption of measures to identify these lands and establishment of procedures to resolve land claims (arts. 14.2 and 14.3); recognition of rights to natural resources (art. 15.1); relocation (art. 16); transmission of land rights (art. 17); prevention and punishment of unauthorised intrusion upon, or use of, the lands of indigenous peoples (art. 18); and agrarian reforms (art. 19).

UNDRIP includes specific provisions on, among other aspects: relocation (art. 10); recognition of rights to own, use, develop and control lands and natural resources (art. 26); establishment of a process to recognize and adjudicate these rights (art. 27); redress, including restitution or compensation (art. 28); conservation and protection of the environment and the productive capacity of indigenous peoples' lands or territories and resources (art. 29).

4.2. Legal recognition of indigenous peoples' rights to land and natural resources

The legal recognition of the rights of indigenous peoples to land and natural resources is fundamental for effectively combating the land dispossession and loss of access to natural resources that indigenous peoples throughout the region experience (UN 2013a), although the extent to which indigenous peoples are affected in this way varies from country to country. Experiences and practices in the region examined in this chapter are diverse, particularly with regard to two core issues requiring attention in the context of land and natural resource rights of indigenous peoples as envisaged in international standards, namely the need for special attention to the collective relationship of indigenous peoples to the land and the important role of customary law, respectively.

Lack of recognition and protection of indigenous peoples' rights to land and natural resources causes land insecurity and vulnerability for indigenous communities but is also a major root cause of conflict. Reports indicate that conflicts have affected 75 per cent of Asia's forests in the last two decades (Patel et al. 2013). When indigenous peoples lose access to land and natural resources, indigenous women and men are bound to migrate in search of alternative sources of living or end up trapped in the informal economy, where risks of being exposed to violations of fundamental rights at work and unacceptable forms of work are more prevalent, in particular for women (see further details in chapter 4 below) (Dhir 2015).

In addition, failure to properly identify the lands and territories which indigenous peoples have traditionally occupied or used and to provide recognition and protection of related rights in the national legal system also have direct implications and consequences for the implementation in any meaningful manner of indigenous peoples' rights to consultation and participation in decision-making, particularly as regards development strategies and projects that have an impact on their rights and interests.

Cambodia is one of the States that have adopted specific provisions to deal with indigenous peoples' rights over lands and natural resources. The Cambodian Land Law recognizes indigenous peoples' collective ownership over the lands on which these peoples have established their residence and where they carry out traditional cultivation (arts 25 and 26). In this latter category, the Law explicitly includes not only the lands that are actually cultivated but also reserves necessary for shifting cultivation. Subsequent decrees and regulations have laid down the procedure to be complied with in order to claim and obtain collective communal land titles.²⁸ This procedure is particularly burdensome for indigenous peoples, because of the overall costs, the length and the complexity of the process and the problems that they experience in complying with it owing to their lack of awareness, language barriers and cultural issues (UN 2016c).

As of May 2016, only 11 communal land titles²⁹ had been issued, compared to approximately 3.5 million individual land titles issued as of August 2014 (UN 2016c, UN 2014c). Furthermore, forested lands fall within the scope of another piece of legislation, namely the 2002 Forestry Law, which recognizes traditional user rights to timber products and non-timber forest products and provides for the creation of community forests, in which communities are granted an area of the permanent forest reserve to manage and derive benefits from (Lasimbang, Luithui 2007). The need for coordination between various norms under different pieces of sectoral legislation, coupled with the fact that indigenous peoples' lands are considered to be part of the public domain until they are properly registered, serves to compound the difficulties faced in the practical application of these provisions, leaving indigenous communities particularly vulnerable to land-grabbing and pressure from third-parties (ILO 2015b).

In 2011, the Ministry of Internal Affairs and the Ministry of Land Management, Urban Planning and Construction issued inter-ministerial circular no. 001, on provisional measures to protect indigenous peoples' communal lands, designed to accord legal protection to the lands possessed by indigenous communities pending the completion of the registration procedure. In addition, in 2014 the Ministry of Land Management, Urban Planning and Construction received for the first time a budget allocation for communal land titling and a target of 10 titles per year was set in connection with the national strategic development plan for 2014–2018. The plan accords high priority to poverty reduction and sustainable social and economic development, emphasizing security of land tenure, including the protection of indigenous peoples' land rights (ILO 2015b).

²⁸ The procedure entails three main subsequent steps. They encompass, first, the recognition of the community by the Ministry of Rural Development as an indigenous community; second, the registration of the said community with the Ministry of Internal Affairs as a legal entity; and, third, the application by the registered community to the Ministry of Land Management, Urban Planning and Construction for the registration of their communal land title.

²⁹ At the same date, 118 indigenous communities had been recognized as such by the Ministry of Rural Development and 90 had been recognized as legal entities by the Ministry of Internal Affairs (UN 2016b).

Box 6. Recognition of rights to land and natural resources in the Philippines

The Indigenous Peoples Rights Act recognizes indigenous peoples' rights of ownership and possession to their ancestral domains. According to the Act (chapter III, section 7), such rights shall include:

(a) **Right of ownership** — The right to claim ownership over lands, bodies of water traditionally and actually occupied by indigenous cultural communities or indigenous peoples, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains;

(b) **Right to develop lands and natural resources** — Subject to section 56 of the Act, the right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and use of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological and environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project; and the right to effective measures by the Government to prevent any interference with, alienation and encroachment upon these rights;

(c) **Right to stay in the territories** — The right to stay in the territory and not to be removed therefrom. No indigenous cultural communities or indigenous peoples will be relocated without their free and prior informed consent, nor through any means other than eminent domain. Where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free and prior informed consent of the indigenous cultural communities or indigenous peoples concerned and, whenever possible, they shall be guaranteed the right to return to their ancestral domains, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or through appropriate procedures, indigenous cultural communities and indigenous peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the land previously occupied by them, suitable to provide for their present needs and future development. Persons thus relocated shall likewise be fully compensated for any resulting loss or injury;

(d) **Right in case of displacement** — In case displacement occurs as a result of natural catastrophe, the State shall endeavour to resettle the displaced indigenous cultural communities and indigenous peoples in suitable areas where they can have temporary life support systems, provided, that the displaced indigenous cultural communities and indigenous peoples shall have the right to return to their abandoned lands until such time that the normality and safety of such lands shall be determined; provided, further, that, should their ancestral domain cease to exist and the normality and safety of the previous settlements are not possible, displaced indigenous cultural communities and indigenous peoples shall enjoy security of tenure over lands to which they have been resettled; and provided, furthermore, that basic services and livelihood shall be provided to them to ensure that their needs are adequately addressed;

(e) **Right to regulate entry of migrants** — The right to regulate the entry of migrant settlers and organizations into the domains;

(f) **Right to safe and clean air and water** — For this purpose, the indigenous cultural communities and indigenous peoples shall have access to integrated systems for the management of their inland waters and air space;

(g) **Right to claim parts of reservations** — The right to claim parts of the ancestral domains which have been reserved for various purposes, except those reserved and intended for common public welfare and service;

(h) **Right to resolve conflicts** — the right to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof shall the complaints be submitted to amicable settlement and to the courts of justice whenever necessary.

The legal framework of the Philippines also explicitly recognizes indigenous peoples' rights to lands and natural resources. The Indigenous Peoples Rights Act recognizes indigenous peoples' collective rights of ownership and possession to their ancestral domains,³⁰ and sets up a procedure for their demarcation and titling through the issuance of certificates of ancestral domain titles.

As in the case of Cambodia, this procedure too has proved to be cumbersome for indigenous communities, owing to the overall costs, its length – the process may take up to two or three years – and the amount of documentary proof required from the claimants (AIPP 2015d). In case of conflicting interests regarding claims within ancestral domains, the Indigenous Peoples Rights Act provides that indigenous customary laws, traditions and practices should apply and any case of doubt or ambiguity in the application or interpretation of laws should be resolved in favour of the indigenous peoples.

Nevertheless, legal practitioners and judges are reportedly not inclined to refer to customary law (UN 2003). It has been observed that land insecurity is, in practice, a leading cause of instability in the areas inhabited by indigenous communities (UN 2015c). Conflicting legal provisions, such as those included in the 1995 Mining Act, with regard to the Indigenous Peoples Rights Act, also contribute to such insecurity (AIPP 2015d). Owing to the predominant Regalian doctrine in practice, indigenous peoples' lands are considered in the public domain, unless proven otherwise (IFAD 2012e). The loss of ancestral lands because of displacement following from the implementation of development projects and environmental degradation, has seriously undermined the capacity of the affected communities to survive (UN 2015c).

Another specific piece of legislation concerning indigenous peoples' rights is the Forest Rights Act, 2006 adopted in India. In this regard, it is worth recalling that approximately 70 per cent of the traditional homelands of indigenous peoples in India has historically been designated as forest and has been brought under the control of the Government since colonial time. Around 4.3 million indigenous people live inside protected areas and some of the forest areas have actually been regarded as “encroached” by indigenous peoples (IFAD 2013). Indeed, in the words of the Ministry of Environment and Forests, “rural people, especially tribals who have been living in the forests since time immemorial, were deprived of their traditional rights and livelihoods and consequently, these tribals have become encroachers in the eyes of the law” (ILO, AIPP 2010, p. 93).

The Forest Rights Act is designed precisely to address this “historical injustice” through the recognition of individual and collective rights to forest lands and resources, including water bodies and grazing areas, in favour of scheduled tribes and other traditional forest dwellers, and the granting of substantive decision-making power to the village assembly, whose consent

³⁰ Ancestral domain is defined as “all areas generally belonging to ICCs/IPs [indigenous cultural communities or indigenous peoples] comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators”.

is required, for instance, in the case of relocation (preamble, art. 4 ff.).³¹ As of 31 March 2014, some 3,742,000 claims had been filed and 1,432,000 titles distributed in accordance with the Act (CEACR 2016b).

Box 7. Recognition of forest rights in India

In 2006, the Indian Parliament passed a law specifically dealing with indigenous peoples' rights to forest lands and resources: the 2006 Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act.

The Act acknowledges that indigenous peoples' forest rights were not adequately recognized in the consolidation of State forests during the colonial period and in independent India, resulting in historical injustice to forest dwelling scheduled tribes and other traditional forest dweller. The Act recognizes a set of collective and individual forest rights in favour of scheduled tribes and other traditional forest dweller with a view to addressing the long-standing insecurity of tenurial and access rights of these people (preamble). They include the following:

- **the right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood;**
- **the right of ownership access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;**
- **other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;**
- **the right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;**
- **the right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity (art. 3).**

In addition, the 2013 Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act has established a procedure for the acquisition of land by state governments for public purposes and has provided for the participation of the affected scheduled tribes and other traditional forest dwellers in the preparation of a social impact assessment study and in decision-making concerning rehabilitation and resettlement measures (CEACR 2016b).

The special status conferred to scheduled areas in terms of self-government, which has been discussed in the previous section, would also entail the recognition of indigenous peoples' rights to their traditional resources and participation in decision-making processes concerning developmental activities. Their application is dependent on amendments to state-level *Panchayati* or local governance legislation by State legislatures. This has, in practice, hampered their implementation (ILO, AIPP 2010).

Most States have enacted legislation imposing restrictions on transfers of land from tribal to non-tribal people. Yet, land loss remains a major problem among indigenous peoples across India

³¹ It should be noted that according to national jurisprudence, the right to life enshrined in article 21 of the India's Constitution encompasses the right to livelihood and other rights of a social and economic nature, including the right to a clean environment and water (ILO, AIPP 2010).

and the single biggest cause of deprivation of their livelihood (ILO, AIPP 2010). It has been estimated that scheduled tribes represent up to 40 per cent of all people displaced between 1947 and 2000 as a result of the realization of development projects, including dams, mining and conservation projects, while they account for only 8.2 per cent of the population (IFAD 2013). Contradictions between different laws and policies concerning mining and land management, including the recent Compensatory Afforestation Fund Act, 2016, and the lack of harmonization of those with the Forest Rights Act are yet to be fully addressed (ILO, AIPP 2010).

In Nepal, the lack of reference to indigenous peoples' rights to land and natural resources in the 2015 Constitution has been regarded as one of the "most glaring omissions" (Roy 2016, p. 11). A report by the Land Reform Commission in 2010 unveiled that the rates of land ownership by the Adivasi-Janajati are low compared to the rest of the population³² and issued a number of recommendations to address the problem (CEACR 2016a).

In Bangladesh, as has been previously recalled, the Chittagong Hill Tracts Land Dispute Resolution Commission has been mandated to address land-related disputes with a view to recognizing and protecting indigenous peoples' land rights in the Chittagong Hill Tracts. In discharging its functions, the Commission is obliged to take into account the laws, customs and usages of the Chittagong Hill Tracts (Roy 2009).

Regarding the indigenous peoples of the plains, the 1950 East Bengal State Acquisition and Tenancy Act is the main piece of legislation regulating land administration in the region. It contains some provisions providing for restrictions on the transfer of land titles belonging to "aboriginal castes and tribes" to any other than aboriginals "domiciled or permanently residing in Bangladesh" which would have the potential to tackle, to certain extent, fraudulent and violent land-grabbing to the detriment of indigenous communities (Roy 2009, p. 64). These provisions are however not uniformly applied in the plains (Roy 2009).

In Malaysia, indigenous peoples' customary land rights are recognized in various laws and policies, such as the 1930 Sabah Land Ordinance and the 2010 Sabah Land Use Policy, the 1958 Sarawak Land Code, and the 1954 Aboriginal Peoples Act (JOAS 2015). Their collective rights to land and resources have also been upheld by Malaysian courts in several judgments (see box 9 below). Yet, as has been reported by the UN Special Rapporteur on the right to food, indigenous peoples continue to face obstacles in acquiring official recognition of their rights and are often confronted with challenges in accessing the sources of their livelihoods owing to encroachment on their lands and environmental degradation caused by varying developmental activities (UN 2014b).

The National Inquiry into the Land Rights of Indigenous Peoples undertaken in 2013 by the Human Rights Commission of Malaysia shed some light on the underlying causes for indigenous peoples' land tenure insecurity (SUHAKAM 2013). According to the report, successive amendments of land laws that do not recognize indigenous peoples' perspectives of land ownership and management have eroded customary rights to land and have had a bearing on administrative

³² For an overview of the situation of land ownership in Nepal and the historical processes leading to land dispossession suffered by indigenous peoples see UN 2009. As a result of land loss and other patterns of marginalization, indigenous people became, in some instances, bonded workers in private farms and wealthier households (UN 2009).



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decisions on indigenous peoples' land claims. Legislation has failed to recognize traditional forms of land occupation for the purpose of the recognition of land rights, requiring evidence primarily of cultivation and settlement and disregarding customary land uses whereby areas are maintained and preserved for activities such as foraging, hunting, or shifting cultivation.

Another crucial factor that has been identified is the lack of consultation with indigenous peoples with regard to activities that affect their territories (SUHAKAM 2013, UN 2014b). Following the report of the Human Rights Commission, the Government has established a Cabinet Committee for the Land Rights of Indigenous Peoples with the mandate to "address, monitor and implement the findings of the report" (Malaysia 2015).

A similar situation is found in Indonesia, where the lack of harmonization between statutory and customary (*adat*) law results in an overall situation of tenure insecurity for indigenous communities (UN 2013c). In fact, the lack of recognition and protection of indigenous peoples' rights to land and natural resources has been regarded as the main cause of their poverty (IFAD 2012a). Although the Basic Agrarian Law recognizes the rights derived from *adat* or customary law, in order for the right-holders to register those rights, the legislation requires the purchase of certification confirming that the claimed land is not State land. Land held under customary law can only be registered and certified once it has rendered into one of the seven private law rights recognized in the Basic Agrarian Law. Collective rights cannot be registered and this deters communities from applying collectively for land certificates (UN 2013c).

All unregistered land is considered as State land until proven otherwise. Forest land is also considered as State land and indigenous communities living in these areas have been regarded as 'illegal squatters'. Litigation of land disputes is time-consuming and often prohibitively expensive for the poor (UN 2013c). A significant development has been marked, however, by the decision of the Constitutional Court in 2013 that has recognized indigenous peoples' customary rights to forest land and has called upon the Government to adjust legislation and policies to implement them (UN 2013c) (see box 8 below).

Box 8.**Indigenous peoples' rights to land and natural resources in the decisions of national courts**

In some Asian countries, national courts are increasingly playing a critical role in advancing indigenous peoples' rights.

In Malaysia, the High Court passed a landmark decision in 1997 in the *Adong bin Kuwau v Kerajaan Negeri Johor* case, whereby it recognized the right of indigenous communities to continue to live on their lands as their ancestors had lived. In the case *Kerajaan Negeri Selango v Sagong Bin Tasi* (2002), the High Court further recognized indigenous peoples' customary title to their lands and their entitlement to compensation under the 1960 Land Acquisition Act (MLJ 2005).

More recently, in *Bato Bagi v Kerajaan Negeri Sarawak*, the Federal Court held that dispossessing indigenous peoples of their lands is not only a deprivation of property rights that are protected under article 13 of the Federal Constitution and are subject to payment of compensation; it also recognized that it infringes the right to life, as recognized in article 5 of the Constitution. In quantifying the compensation owed to the affected community, the Court indicated that native customary rights should not be evaluated purely from a monetary viewpoint, but consideration should also be given to the attachment of indigenous peoples to their land and their dependency on it (JOAS 2015).

In Indonesia, the Constitutional Court, by decision 35/PUU-X/2012 of 2013, recognized indigenous peoples' customary rights over forest lands, holding that the customary forests of indigenous peoples should not be considered as belonging to State forest areas. According to the Court, the 1999 Forestry Act, which only recognizes use rights within State forest areas in favour of indigenous communities, violated constitutional recognition of their rights. The case was filed by the Indonesian national indigenous peoples' organization Alliance of Indigenous Peoples of the Archipelago who estimated that the ruling would affect 30 per cent of Indonesia's forest estate or 40 million hectares (154,000 square miles) (Climate Change Monitoring and Information Network 2013).

Where Viet Nam is concerned, the Constitution stipulates that land belongs to the people of Viet Nam with the State managing it as its representative. The Land Law regulates the allocation, lease and recognition of land-use rights to organizations, including State agencies, households, individuals and communities, among others (arts 5 ff.). The revised Land Law of 2013 stipulates that the State shall adopt: "policies on residential land and land for community activities for ethnic minorities in conformity with their customs, practices and cultural identities [...]" and "policies to facilitate for ethnic minorities who are directly engaged in agricultural production in rural areas to have land for agricultural production" (art. 27).

Customary law is not officially recognized and many ethnic minority communities have reportedly suffered from forced relocation, confiscation of their ancestral lands in favour of industrial crops, and what is known as land-grabbing. As regards forest lands, the land inventory indicates that nearly 79 per cent of national forest land has been handed over. Solely 24 per cent of people from ethnic minorities have recognized rights on them and only two per cent of forest has been allocated to communities (McDougall 2011, Thu Thuy et al. 2012, Errico 2016).

The Lao People's Democratic Republic has an analogous legal framework concerning land rights. The revised Land Law of 2003 has emphasized the need for greater access to land and tenure security for rural households as a part of the State's efforts to reduce poverty. According to the Law, the State will allocate land-use rights to different stakeholders through temporary land-use certificates (art. 3). Under this law, in 2012 the first communal land title was issued in favour of five communities. The granting of communal land titles has also been set as an objective of

the national social and economic development plan. Furthermore, in 2007 the Prime Minister announced an indefinite moratorium on large land concessions for plantations and mining (AIPP 2015c). On the other hand, as we shall see in the next chapter, resettlement of communities to lowlands is being pursued as a strategy to provide them with access to social services such as health and education (IFAD 2012b).

In Thailand, in 2010, the Cabinet adopted a resolution on the “restoration of traditional livelihood practices and livelihood of the Karen people” and a resolution concerning the Chao Ley people, stating the right of these people to stay in their ancestral lands and continue their traditional agricultural practices (ILO 2015c, IWGIA 2016). The application of these resolutions has so far been slow, reportedly because of, among others, lack of awareness of concerned government agencies, the need for coordination across different ministries and the low budget allocated for the activities (IWGIA 2016).

More generally, the recognition of the rights of indigenous peoples to their traditional lands, especially when these are forest lands, seems to encounter considerable difficulties. In 2011, the Government passed the Regulation of the Prime Minister’s Office on the Issuance of Community Land Title Deeds which provides for the granting of community land-use permits in favour of applying communities. The adoption, in 2014, of the so-called “reforestation master plan”, aimed at combating illegal logging and deforestation, has had a severe effect on indigenous commu-



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nities, many of whom live in natural protected areas and whose land rights are not recognized (AIPP 2016). There are recurrent cases of fines and sanctions, including imprisonment, against indigenous people living in forest areas who are accused of encroachment on state-lands or illegal logging in national parks (AIPP 2016). The State has been encouraged to review relevant forestry laws in order to ensure respect for ethnic groups’ lifestyles, livelihood and culture and their participation in decision-making that affects them (CERD 2012a).

Box 9. Indigenous women's rights to land and natural resources

Indigenous women and men have distinct roles and responsibilities in the management of land and natural resources. In many indigenous societies in Asia, women are responsible for ensuring food for the family and securing nutrition, collecting firewood, wild foods and crops, maintaining seeds and harvests, collecting and using medicinal plants, fetching water and managing agricultural fields (AIPP 2015e).

Convention No. 169 stipulates that the provisions of the Convention shall be applied without discrimination to men and women members of indigenous peoples (art.3). UNDRIP further declares that States shall take measures to ensure that indigenous women enjoy the full protection and guarantees against all forms of violence and discrimination (art. 22)

The lack of recognition of the collective rights of indigenous peoples to their traditional territories adversely affects indigenous women in particular. Moreover, it has been observed that violence against indigenous girls and women cannot be separated from the wider contexts of discrimination and exclusion affecting indigenous peoples as a whole, including land dispossession (UN-Women et al. 2013).

As their communities lose access to their resources or their environment becomes polluted, women have to walk longer distances to provide for water and firewood; their daily tasks become heavier leaving less time for other productive activities, including tending the fields or making handicrafts. Traditional knowledge linked to the use of medicinal plants or traditional seeds is lost, weakening, in certain cases, the role of the women in their communities. Obligated to change their traditional livelihood strategies and abandon their occupations, they face greater difficulties than men to find alternative occupations because of lower education, language barriers, family-care responsibilities and multiple forms of discrimination (ILO 2012b).

They are also more vulnerable to exploitation, sexual abuse and trafficking. In Nepal, for example, it has been estimated that 80 per cent of trafficking victims in the country are women and girls from indigenous communities and Dalit women (Dhir 2015). In Thailand, because of the lack of birth registration and identification documents, a significant number of women and girls from ethnic minorities are vulnerable to trafficking (UN 2012d). Moreover, indigenous women are often victims of gender-based violence when their territories are militarized or are disputed, as happens, for example, in Bangladesh and the Philippines (UN Women et al. 2013, UN 2013a, AIPP 2015e, UN 2013d).

In spite of their important role in the management of their territory, indigenous women also face discrimination from within their communities. They are often excluded from decision-making at community level and, in some cases, including in Bangladesh, India, Indonesia, Malaysia and Nepal, traditional practices prevent them from inheriting and acquiring land and other goods (CEDAW 2014, AIPP 2015e, AIPP 2015f). Their major role in food production, particularly agriculture including shifting cultivation, horticulture and wet rice cultivation, is not viewed as work, because it is mainly directed at family subsistence and is not related to external markets (ILO 2012b).

Violence within their communities and families is also an issue for many indigenous women in Asia. An inter-agency report found that indigenous girls and women are at risk of violence in communities where intracommunal and intercommunal conflicts have arisen, and in those communities that conform to deeply-rooted patriarchal systems and practices that relegate women and girls to subordinate roles and positions in society. In India, for example, 47 per cent of ever-married girls and women aged between 15 and 49 belonging to scheduled tribes have experienced emotional, physical or sexual violence committed by their husband (UN Women et al. 2013).

4.3. Conclusions

As may be expected, the experiences and practices with regard to the rights to land and natural resources vary from country to country. Yet, it is significant that in all the countries reviewed the issue of indigenous communities' access to land for local livelihood activities has been raised as an important policy issue which offers entry points for future policy debates and needed improvements.

A number of examples highlighted in the study involve interesting and noteworthy features. For instance, Cambodia and the Philippines have clearly recognized the collective attachment of indigenous peoples with the land and territories that have traditionally occupied or used and provide for the issuing of collective land titles. In both countries, however, the land titling procedures have been assessed as long and cumbersome, partially for the indigenous communities concerned and the overall implementation of the relevant laws and regulations is lagging behind. Unique in the region is India's Forest Rights Act, which, aiming at addressing historic injustice experienced by forest dwelling scheduled tribes and other traditional forest dwellers, protects both individual and collective rights to forest land (see box 7 above). In several countries, including Indonesia and Malaysia, indigenous peoples enjoy customary rights to land and natural resources, as also recognized by the courts.

Overall, however, considerable challenges and obstacles remain affecting the Asia's indigenous peoples' enjoyment of their rights to land and natural resources. Laws and regulations on the matter remain patchy and in most cases do not sufficiently recognize the collective nature of these rights. Even where these rights are legally recognized, their application is often defective, sometimes owing to a lack of coherence and coordination across applicable regulations and relevant sector policies or weak capacity of the responsible state institutions. As a result of insufficient recognition and application of land and natural resource rights, indigenous peoples in the region continue to be exposed to land tenure insecurity with all its consequences for their livelihoods. A major challenge that several countries face is the need to ensure the proper coordination between customary and state law governing land.

The lack of effective recognition and application of indigenous peoples' land rights, in combination with the absence of procedures for consultation in relation to specific development projects³³ affecting their territories or environmental conservation initiatives, and, more broadly, the lack of participation in decision-making concerning development strategies, have often led to large-scale displacement of indigenous peoples, restrictions to their access to key resources for their livelihoods, growing poverty and food insecurity, erosion of their traditional institutions and cultures, and mounting conflicts (UN 2013a, UN 2007). Though violence experienced by indigenous women within and outside their communities is multi-faceted and has various root causes, lack of access to land and natural resources and land-related conflict and displacement are factors contributing to indigenous women's exposure to violence.

³³ These projects have included hydroelectric, mining, oil and gas projects and the establishment of plantations for the production of biofuels, sugar cane, rubber or timber (UN 2013a).

5. Public policies on cultural, social and economic rights

5.1. National approaches to social, economic and cultural development

In most of the countries under review, national development and poverty reduction strategies acknowledge the disadvantageous social and economic conditions of indigenous peoples.³⁴ Few of them, however, expressly envisage specific and targeted action to address the needs of these peoples. Among them feature, for example, Bangladesh, India, Nepal and Viet Nam. Their national strategies include measures addressing a wide range of issues, including health, education, land tenure security and income-generating activities.

In all the countries, however, the overall legal and policy context related to the recognition of indigenous peoples as distinct collectivities, their participation in decision-making and the recognition and protection of their rights, including the right to define their priorities for development, affects the way these strategies are designed and implemented, how problems are identified, understood and approached, the relevance of the ‘solutions’ provided, the full assessment of their impacts and opportunity costs, and, eventually, their success and sustainability. Moreover, the availability of disaggregated data on the social and economic situation of indigenous peoples is extremely limited in Asia (Dhir 2015). Their statistical invisibility, together with their exclusion from decision-making processes affecting them, clearly influences the understanding of the issues at stake and the development of appropriate responses.

Box 10. Rights of indigenous peoples and development

Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom (UN Declaration on the Right to Development, 1986, preamble).

Convention No. 169 recognizes indigenous peoples’ right to determine their own priorities for development and to exercise control, to the extent possible, over their economic, social and cultural development. It provides for their right to participate in the formulation, implementation and evaluation of development plans and programmes which may affect them (art. 7.1). Moreover, it stipulates that the improvement of the conditions of life and work and levels of health and education of indigenous peoples, with their participation and cooperation, shall be a matter of priority in plans for the overall economic development of the areas that they inhabit (art. 7.2).

UNDRIP states that indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development (art. 23).

In the Philippines, the Indigenous Peoples Rights Act has recognized the right of indigenous peoples freely to pursue their economic, social and cultural development and determine and decide priorities for development (sections 13 and 17). In Cambodia, the National Policy on the Development of Indigenous Peoples recognizes the right of indigenous peoples to decide their economic, social and cultural development (clause 9).

³⁴ Exceptions are the national economic and social development plan of Thailand, which refers to the broad category of “local communities”, and Indonesia’s mid-term development plan, which includes broad categories of “poor communities” and “marginal groups” (Dhir 2015).

The social and economic disparities existing between indigenous peoples and the other segments of the national population in Asian countries have been ascribed to the geographical remoteness of their communities. Indeed, indigenous peoples in the countries examined for this report live predominantly on the margins of the State, often, but not exclusively, in remote mountainous regions (Erni 2014).³⁵ Thus the Lao People's Democratic Republic, for example, has implemented a policy of relocation which aims at clustering and settling ethnic minority communities of the mountainous areas in lowland villages with better access to public services and infrastructure. This has resulted in the uprooting of communities that had to adopt new lifestyles and livelihoods, besides disregarding the cultural ties that these communities may have had to their lands (CERD 2012b).

Generally, indigenous peoples' organizations have underscored the deterioration of indicators related to poverty, malnutrition, health and mortality rates in cases where communities have been relocated (UN 2013a). In fact, it has been demonstrated that geographical remoteness alone would not explain the persisting social and economic gaps.

In Viet Nam, various studies have concluded that the social and cultural remoteness of ethnic minorities, discrimination, language barriers and historical mistrust, along with prejudices and misconceptions about their culture and practices, all contribute to social and economic disparities between the majority and minority groups. Top-down development approaches with little or no participation of ethnic minorities and a lack of consideration of their traditional knowledge and practices have, in most cases, resulted in the design of ill-suited development plans not responding to the real needs of the people concerned (Errico 2016).

A study conducted by the World Bank in the Lao People's Democratic Republic has likewise concluded that national policies are unlikely to be broadly successful because they promote a development approach that is not tailored to each ethnic group's specific needs (IFAD 2012b). In Malaysia too it has been observed that the disproportionate representation of indigenous peoples among the poorest segments of the population, notwithstanding the numerous positive measures adopted since the 1990s, when the National Development Policy acknowledged the need for specific attention to these groups, is the result of various factors that include the lack of understanding and consultation with indigenous communities about their needs and aspirations (JOAS 2015).

In general, as observed by the UN Special Rapporteur on the rights of indigenous peoples, the disproportionate representation of indigenous peoples in Asia among the region's poor is attributable to historical and contemporary alienation of their lands and resources, inadequate participation in decision-making related to policy and legislation, and poorly designed or targeted government programmes implemented against a backdrop of structurally embedded centuries-old discrimination (UN 2013a, para. 26).

Negative prejudices and stereotypes about indigenous peoples and their practices still exist in these countries and inform the assimilationist and top-down approaches predominant in some of them.³⁶ In Thailand, negative stereotypes are reportedly conveyed by the media (CERD 2012a). In

³⁵ It has been argued that this stems from historical processes of defence against external aggressions and also displacement and marginalization by third parties (Erni 2014).

³⁶ As illustrated in chapter 1 above, some States reviewed for this study, such as Indonesia and Malaysia, actually enshrine this approach in their constitutions.

Viet Nam, the enormous efforts deployed to address the social and economic gaps existing within the society, with the adoption of more than 163 specific policies and programmes concerning ethnic minorities (ILO 2015a), are accompanied by the adoption of measures aimed at phasing out certain traditional practices that are viewed as obsolete and contrary to the objective of the social and economic development of the country (CESCR 2014, CRC 2012a). In India, it has been noted that mainstream media rarely report on Adivasi issues but, when they do, most coverage falls into three categories, namely paternalistic welfare stories on deprivation and poverty; stories of atrocities against them and stereotyped descriptions of the so-called “exotic” cultures and social norms of these communities (ILO, AIPP 2010, p. 28).

5.2. Employment and occupation

As recalled in the previous chapter, the vast majority of indigenous peoples in Asia depend on access to land and natural resources for their livelihood. It has been estimated that traditional occupations would account for 90 per cent of indigenous peoples’ livelihood in Cambodia, 80 per cent in Malaysia, 70 per cent in Thailand and 50 per cent in the Philippines (AIPP 2010). ILO CEACR has noted that, whether they are hunter-gatherers, forest dwellers, workers in the informal economy or formally employed, including in the public service, indigenous peoples continue to face high levels of discrimination due to persistent prejudices and negative stereotypes, and that their traditional occupations are often disregarded as outdated or unproductive (CEACR 2012, para. 767).³⁷

In Asia, indigenous peoples’ traditional occupations include, among others, farming, livestock-raising, fishing, hunting and gathering, production of handicrafts and food items, and small-scale mining. Agriculture, encompassing both sedentary agriculture in rice fields and vegetable gardens and shifting cultivation, represents the main occupation. It is practised mostly for consumption and subsistence, but crops are also being increasingly produced for the market in order to ensure cash income for families.

Livestock-raising also responds to the need for a source of cash in case of emergencies, besides providing the family with a source of protein in their diet, draught animal power in the fields and animals for the performance of traditional rituals (AIPP 2010). For indigenous peoples living near rivers, lakes, seas and other water bodies, fishing is a fundamental occupation, just as the hunting of wild animals and gathering of wild vegetables, fruits, herbal medicines,³⁸ honey and other non-timber products, are the main components of the livelihood of indigenous peoples living in forest areas (AIPP 2010).

³⁷ Men and women from indigenous peoples in Asia increasingly seek income from wage work, casual and seasonal, through work in farms, plantations, mines, construction sites, informal enterprises or as street vendors and domestic workers. Those who find employment tend to receive lower wages, have weaker contract status and higher likelihood of losing their jobs (ILO 2015d). As noted above, as a result of land dispossession and restrictions on access to natural resources, many indigenous peoples in search of alternative sources of living have to resort to labour migration or end up trapped in the informal economy where risks of being exposed to violations of fundamental rights at work and unacceptable forms of work are more prevalent.

³⁸ Some indigenous persons earn their living as traditional specialists in healing. In some countries, such as Malaysia, concerns have been raised that the requirements for registration, licensing fees and other prerequisites under the legislation on complementary medicine may discriminate against indigenous peoples’ traditional healers (AIPP 2010, JOAS 2015).



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Land dispossession and loss of access to natural resources have a significant impact on indigenous peoples' livelihoods, resulting in growing poverty and food insecurity, among others. The previous chapter reviewed the measures aimed at recognizing indigenous peoples' rights to land and natural resources which have been adopted by the States under consideration. As previously noted, land tenure security and access to natural resources are also receiving particular attention in the framework of national strategies for development and poverty reduction.

Even when land security is ensured, however, a number of other factors affect the capacity of indigenous peoples to practise their occupations. These include the prohibition of certain practices, such as shifting cultivation, the lack of access to markets and poor rural infrastructure, low prices of agricultural products, absence or inadequateness of training and skills development programmes, the need for natural disaster preparedness and management, the impact of climate change and related mitigation and adaptation measures, and the lack of participation in the formulation of development plans and climate change responses (AIPP 2010).

It has been observed that, despite their importance, wild foods are rarely taken into account in the official statistics on economic values of natural resources and, consequently, are not considered adequately in development plans (Savajol et al. 2012). CEACR has also highlighted the essential need to recognize the ownership and possession of the lands that indigenous peoples traditionally occupy and their access to their communal lands and natural resources for traditional activities and stressed that access to credit, marketing facilities, agricultural extension and skills training facilities should also be provided on an equal footing with other parts of the population (CEACR 2012, para. 768).

On the occasion of a regional workshop to reflect on indigenous peoples' traditional livelihoods, indigenous peoples' organizations themselves identified a number of key recommendations aimed at strengthening their livelihoods, including: recognizing rights to land and natural resources;

ensuring the intergenerational transfer of good practices of traditional livelihoods and sharing of lessons learned with the wider population; recognizing and supporting traditional livelihood practices; protecting rotational farming as an appropriate and sustainable livelihood; ensuring gender equality and equal opportunities with regard to representation and consideration of the specific roles that men and women play in traditional livelihoods; supporting traditional use of forest and forest resources; and adopting community-based, market engagement activities (AIPP 2010). Examples of such broader approaches are found in some countries in the region, although the extent to which indigenous peoples have participated in the design of the strategies varies widely.

In the Philippines, pursuant to the Indigenous Peoples Rights Act, the National Commission on Indigenous Peoples has the mandate to develop a five-year master plan for the delivery of support services to indigenous peoples based on needs assessments of indigenous communities and consultations with, among others, leaders of indigenous peoples' organizations, indigenous communities, national government agencies, and civil society. The Indigenous Peoples Master Plan (2012–2016) places particular emphasis on building capacity and creating economic opportunity in indigenous communities towards achieving food security and economic growth, and protecting the ecosystem and sustainable management of natural resources in the ancestral domains and lands against the backdrop of climate change (NCIP 2012).

Among the measures envisaged for this purpose, the Plan includes: the issuance and registration of certificates of ancestral domain titles; the formulation of integrated area or community development approaches; agroforestry development and organic farming; mainstreaming indigenous peoples' products in the market chain; provision of agricultural equipment; skills development and training in, among other skills, the development of business planning and entrepreneurship, organic handicraft development, organic vegetable processing technology, bamboo production and processing, fertilizer production and soil conservation and management, fruit processing into various by-products, and climate change adaptation; public works, including irrigation systems and farm to market roads; and ecotourism development. Targeted capacity-building is also contemplated for local government units and national government agencies with a view to equipping them with the capacity effectively to provide the needed services to indigenous peoples. These programmes encompass, among others, capacity-building on the Indigenous Peoples Rights Act and related laws and policies, convergence of programmes and services, and monitoring and evaluation (NCIP 2012).

In India, the Ministry of Tribal Affairs is entrusted with providing more focused attention on the integrated social and economic development of the most underprivileged sections of Indian society, namely the scheduled tribes, in a coordinated and planned manner (ILO, AIPP 2010, p. 36). In practice, this has consisted in administering various central government schemes that channel funds towards the welfare of these scheduled tribes (ILO, AIPP 2010).

The various programmes directed at supporting economic activities include the Tribal Cooperative Marketing Development Federation of India, a multi-state cooperative society created in 1987 with the aim of providing marketing assistance to scheduled tribes and ensuring that they receive remunerative prices for their forest products and surplus agriculture produce (Dhir 2015). Support to income-generating and marketing activities for scheduled tribes is also provided by the National Scheduled Tribes Finance and Development Corporation.

In addition, India's Mahatma Gandhi National Rural Employment Guarantee Scheme, which is a poverty-alleviation scheme aimed at enhancing livelihood security in rural areas by providing at least 100 days of guaranteed wage employment, has special provisions for scheduled tribes, such as, for instance, up to 50 additional days of wage employment per scheduled tribe household living in forest areas (Press Information Bureau, Government of India 2014). This scheme also engages with environmental concerns, and in 2015 converged with the National Mission for Green India, which is one of the eight missions under the National Action Plan on Climate Change, and is aimed at increasing and improving the forest cover in the country (Ministry of Environment, Forests and Climate Change 2015).

India's 2015 policy for skills development and entrepreneurship also explicitly identifies scheduled tribes as a target group (Ministry of Skill Development and Entrepreneurship, 2015), and in 2016, the Government launched the Stand-Up India Scheme aimed at promoting entrepreneurship among scheduled tribes, scheduled castes and women through targeted loans of between 1 million and 10 million rupees (approx. US\$ 15,000 and US\$ 150,000) (Times of India 2016). In addition, the Tribal Subplan³⁹ places emphasis on improving access to irrigated land, entrepreneurship and skills development (Dhir 2015).

In Bangladesh the sixth five-year plan (2011–2015) includes measures designed to promote rural development and income-generating activities for indigenous peoples, such as poultry and livestock-rearing, social forestry and cultivation of fruit and medicinal plants. It also focuses on resolving land disputes, providing microcredit, and realizing infrastructure works, including the building of rural roads and bazaars (Dhir 2015). Training courses on vegetable cultivation techniques and bank financing have been provided to indigenous women from the Chittagong Hill Tracts (CEACR 2016c).

In Cambodia, the National Policy on the Development of Indigenous Peoples provides for the enhancement of indigenous peoples' living standards through the development of agricultural production. It emphasizes, among other factors, irrigation, the improvement of cultivation, vocational training aimed at income generation from sources other than traditional practices, and the provision of credit for agricultural production (ILO 2015b). According to information provided by the Ministry of Labour and Vocational Training, vocational training courses on vegetable planting, animal raising, fish raising, and rubber resin tapping are provided for ethnic groups who live in the north-east provinces of Cambodia (CEACR 2014).

³⁹ The Tribal Subplan has been in force since 1974 with the objective of ensuring budgetary resources for the development of scheduled tribes (Dhir 2015, p. 46).

Box 11. Indigenous children

According to ILO estimates, the Asia and Pacific region has the largest absolute number of child labourers (ILO 2013b). Data concerning specifically indigenous children are, however, scarce owing to the overall statistical invisibility of indigenous groups, which adds to the difficulties of estimating child labour in general.

In Nepal, available data show that the highest proportion of child labour and hazardous child labour is found among the Adivasi-Janajati. In India, 16.6 per cent of children aged between 5 and 14 from households headed by a scheduled tribe member are reportedly engaged in work. This percentage is considerably higher than that of other groups. In Viet Nam, the percentage of child labourers aged between 5 and 14 is three times higher among ethnic minority children than among Kinh-Hoa children (Dhir 2015).

Indigenous child labour is seen as a reflection of the marginalization and deprivation that many indigenous peoples experience. For instance, consultations held in the Philippines in the framework of ILO research on indigenous child labour revealed the following key driving forces behind child labour: loss of lands, violation of indigenous peoples' collective rights, and the impact of extractive industries leading to the worsening of the economic condition of indigenous peoples (ILO 2007).

ILO work on indigenous child labour identifies three critical steps to prevent and eliminate child labour, namely:

- facilitate the mainstreaming of indigenous peoples' priorities in poverty reduction strategies;
- support and facilitate indigenous peoples' participation in the development of such strategies;
- promote a multi-faceted development approach based on customary livelihoods (ILO 2007).

Viet Nam has also adopted targeted measures to support the livelihoods of ethnic minorities. These include land reallocation, the provision of preferential loans and other forms of support for job creation in the mountainous areas, and vocational training. It has been noted that the vocational training provided under national programmes often does not suit local needs and that specific training on agriculture would be required, along with additional measures, to encourage investments in rural areas and strengthen the capacity of local authorities to support communities (ILO 2015a). In Nepal, the Ministry of Industry has been implementing a micro-enterprise development programme with a special focus on the traditional skills of indigenous peoples (CEACR 2016a). In Malaysia, the Government has introduced income-generating programmes and commercial agricultural activities tailored specifically for indigenous communities (Malaysia 2015).

Furthermore, examples of special measures designed to promote the access of women and men from indigenous peoples to wage employment and related training opportunities are found in a number of countries (see section 5.3 below, on education). For example, a system of quotas in public employment in favour of indigenous peoples exists in Bangladesh, India and Malaysia (CEACR 2016b, CEACR 2016c, JOAS 2015). In Viet Nam, among other measures adopted to promote employment and training opportunities for ethnic minorities, under the Labour Code, the State shall assist employers who employ a large number of people from ethnic minorities (CEACR 2016e). In Cambodia, the Law on the Status of Civil Servants gives priority to the recruitment of indigenous candidates to government positions (ILO 2015b). In Nepal, a youth employment programme has been initiated targeting economically deprived groups. The Technical and Vocational Training Council allocates 5 per cent of its scholarships to the Adivasi-Janajati (CEACR 2016a).

5.3. Culture and education

Special measures in the field of culture and education targeting indigenous peoples have been adopted in virtually all the countries examined for this study. Where culture is concerned, Viet Nam, for example, adopted a policy in 2011 on the conservation and development of ethnic minorities' culture until 2020. As a result, for the first time after many decades, the language of the Thai and the Dao ethnic groups has been reinstated in teaching programmes at school (ILO 2015a).

On the other hand, Law 28/2001 on Cultural Heritage provides for the protection of the customs, ways of life and lifestyles of the country, but stipulates that outdated customs that harm the people's cultural life shall be abolished (art. 22) (UN 2015d). Likewise, Nepal has adopted a national cultural policy for the preservation of the cultural heritage of indigenous peoples (CEACR 2016a). More importantly, the country's new Constitution recognizes the right of every Nepalese community residing in Nepal to preserve and promote its language, script, culture, cultural civilization and heritage (art. 32).

In the Philippines, the Indigenous Peoples Rights Act stipulates that the State shall respect, recognize and protect the right of indigenous cultural communities and indigenous peoples to preserve and protect their culture, traditions and institutions (section 29). In Cambodia, the 2005 Policy for Curriculum Development for Primary and Secondary Schools sets out to promote understanding and appreciation for other peoples and other cultures, civilizations and histories (ILO 2015b, p. 77). The National Policy on the Development of Indigenous Peoples provides that the culture, beliefs and traditions of indigenous peoples should be incorporated in school curricula (ILO 2015b). The national social and economic development plan (2011–2015) of the Lao People's Democratic Republic includes the provision of support for the maintenance of cultural sites of ethnic minorities.

In Malaysia a study by the indigenous peoples' network Jaringan Orang Asal SeMalaysia (JOAS) has observed that cultural affairs are essentially linked to the promotion of tourism and identifies the need for the revision of the 1970 National Culture Policy with a view to ensuring the promotion and protection of indigenous peoples' cultures from being misused, especially in tourism (JOAS 2015). In India, a study conducted by the ILO and AIPP found that, in spite of several references in legal and policy instruments, the cultural rights of scheduled tribes are not considered to be a priority (ILO, AIPP 2010).

In the Philippines the Indigenous Peoples Rights Act provides for the adoption of special measures, including scholarships and grants, to ensure equal opportunities for indigenous peoples to gain access to education, while also recognizing the right of these peoples to establish and control their education systems and institutions. It further provides for the adoption of effective measures, in consultation with indigenous peoples, to ensure that the dignity and diversity of their cultures, traditions, histories and aspirations are appropriately reflected in all forms of education, public information and cultural-educational exchange (sections 30 and 31). The Department of Education has created an Indigenous Peoples' Education Office and is implementing an Indigenous Peoples' Education Framework (AIPP 2015d).



In Viet Nam, the 2005 Education Act lays down that the State should facilitate the learning of ethnic minority languages and scripts by the children of those minorities, in order to preserve their cultural identity. In 2008–2009, 17 provinces and cities⁴⁰ were able to provide teaching of ethnic minority languages as part of the curriculum in secondary school. Yet, according to the Committee for Ethnic Minorities Affairs, these languages are at risk of disappearance, as a result, among other factors, of broader processes of cultural integration and assimilation and the poor quality of textbooks and training of teaching personnel (ILO 2015a).

Despite the notable achievements in improving access to education throughout the country, illiteracy and dropout rates, in particular after primary education, remain high among ethnic minorities, mainly owing to language barriers, poverty-related factors, school fees, irrelevance of curricula proposed to children from ethnic minorities, hostile perceptions by others and difficult relationships with teachers who are not, in many cases, from ethnic minority groups and often lack training in bilingual education (CEDAW 2015, CESCR 2014, CRC 2012a, ILO 2015a).

It has also been noted that indigenous children have limited opportunities to preserve and exercise their distinct identities (CRC 2012a). A pilot project undertaken by the Ministry of Education and Training in collaboration with the United Nations Children’s Fund (UNICEF) is promoting bilingual education for the Hmong, Jarai and Khmer ethnic groups at the preschool and primary school levels, in three provinces (UN 2015d).

40 In her report of 2015, the UN Special Rapporteur in the field of cultural rights refers to 20 provinces and cities (UN 2015c).

In Cambodia, despite the remarkable progress made in boosting primary and secondary enrolment, children from ethnic minorities display comparatively low enrolment rates. The appropriateness of curricula and the accessibility of educational services in geographically remote areas remain major challenges (CRC 2011). In 2016, the Government launched a multilingual educational plan of action which builds on previous programmes of bilingual education for indigenous children. The plan envisages the construction of community schools in an effort to secure bilingual education from the initial stages of primary-level schooling (UN 2016c). The National Policy on the Development of Indigenous Peoples provides for the development of a training programme for school teachers focused on the learning of the language and cultures of indigenous peoples (clause 2).

The new Constitution of Nepal recognizes the right of every community to education in its mother tongue and the right to establish and run educational institutions (art. 31.5). This provision has been regarded as crucial for the identity, dignity and integrity of the indigenous peoples in the country (Roy 2016, p. 33). It is an undeniable fact that indigenous children have low enrolment and high drop-out rates (CRC 2016).

Similarly, in India, the Constitution provides for education in their mother tongue for children belonging to ethnic minorities at primary school (art. 350A). This provision notwithstanding, the lack of mother-tongue education in primary classes has been deemed to be one of the main reasons underpinning the low rate of access to education of children from scheduled tribes. Other reasons identified include poor infrastructure and ignorance by non-tribal teachers about the languages and culture of children from scheduled tribes (ILO, AIPP 2010).

A range of special measures have been adopted to ensure access to education, including the establishment of boarding schools for children from remote areas, and admission quotas in higher educational institutions (ILO, AIPP 2010). Despite progress in improving enrolment rates, dropout rates after the completion of primary school remain high compared to the rest of the population (IFAD 2013). In addition, it is reported that quotas at higher levels of education remain largely unfulfilled. The reasons for this are manifold and concern not only the lack of funding, but also deeper marginalization. Discrimination by other communities and high-caste teachers results in a high rate of absenteeism (ILO, AIPP 2010).

In Malaysia, the Federal Constitution provides for the allocation of scholarships to the natives of Sabah and Sarawak (art. 153.2). It does not contain a similar provision in favour of the Orang Asli of Peninsular Malaysia (JOAS 2015). The 1954 Aboriginal Peoples Act recognizes the right of the Orang Asli to follow their own ways of life. Nevertheless, the high drop-out rates among the Orang Asli have been regarded as a significant indicator of the extent to which the curricula proposed are extraneous to their way of life.

The 1966 Education Act stipulates that the teaching of indigenous languages should be provided in national schools “if it is reasonable and practicable to do so” (JOAS 2015, p. 119). While this has made possible the teaching of two indigenous languages, many other requests have been left unattended. The criteria of “reasonable and practicable” have been perceived as a considerable barrier and the allocation of more resources for the teaching of indigenous languages has been demanded (JOAS 2015). Furthermore, the lack of birth certificates impedes access to access education by many indigenous children (JOAS 2015).

In Bangladesh, the Constitution contemplates the adoption of special measures in favour of “backward sections of citizens” (art. 28). The 2010 National Education Policy provides for mother-tongue-based education for indigenous children. The 2010 Small Ethnic Groups Cultural Institutions Act further establishes quotas for the enrolment of ethnic minorities in higher educational institutions (CEACR 2016c). Nevertheless, indigenous and Dalit children reportedly continue to face discrimination and violence and lack access to quality education, in particular in their mother tongue (CRC 2015).

Indonesia’s 2003 Educational System Act also provides for the adoption of positive measures in favour of indigenous peoples. Education facilities are not available to all communities, however, because of their geographical remoteness and, when they are available, they often lack teachers (IFAD 2012a). The national development plan places a particular emphasis on the inclusion of communities in remote areas, although there is no specific reference to indigenous peoples (Dhir 2015).

Thailand is also faced with the challenge of a shortage of facilities, teachers and teaching materials in remote areas. A number of pilot projects designed to include the teaching of ethnic languages in schools have been mounted, under the 1999 National Education Act, to offset the current limited opportunities for many ethnic children to learn their languages and to counter the risk of disappearance of some of these languages (CRC 2012b, ILO 2015c). Reports indicate that indigenous children are denied enrolment because of the lack of identification documents and lack of facilities and resources to accommodate multicultural and bilingual classes (ILO 2015c).

In the Lao People’s Democratic Republic, the National Plan of Action for Education for All (2003–2015) acknowledges that children from ethnic minorities face considerable barriers to education, including the lack of qualified teachers and the absence of schools in many villages in provinces with a large ethnic minority population. In response, the Ministry of Education and Sport has taken a number of positive steps, including the establishment of boarding schools in remote areas, construction of new schools, school-fee exemption and the provision of textbooks, meals, uniforms and access to health care for children from ethnic minorities (CEACR 2016d, IFAD 2012b).

5.4. Social protection, health and other public policies

Social protection plays an important role in preventing and reducing poverty, inequality, social exclusion and social insecurity. According to a report by the Asian Development Bank, in Asia and the Pacific, the non-poor represent, on average, 83 per cent of all potential beneficiaries of social protection, while the poor represent only 17 per cent. This can be explained by the fact that social insurance is the predominant form of social protection in Asia and the Pacific. This dominance is most pronounced in East Asia and South-East Asia, whereas in South Asia, social assistance almost equals the importance of social insurance. The report highlights that, because social assistance benefits the poor and women much more than social insurance, increasing its depth (its average benefits) should be a priority (ADB 2013).

Box 12. Social protection for indigenous peoples as a tool to foster greater social inclusion in Asia

Convention No. 169 and UNDRIP both recognize indigenous peoples' right to social security without discrimination. Convention No. 169 provides that social security schemes shall be extended progressively to cover indigenous peoples (art. 24). UNDRIP declares that indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including in the areas of social security. They shall be actively involved in developing and determining economic and social programmes affecting them and, to the extent possible, shall administer such programmes through their own institutions (arts. 21 and 23).

CESCR has also emphasized that States should take particular care to ensure that indigenous peoples and ethnic and linguistic minorities are not excluded from social security systems through direct or indirect discrimination, particularly through the imposition of unreasonable eligibility conditions or lack of adequate access to information (UN 2008b).

The ILO Social Protection Floors Recommendation, 2012 (No. 202), provides guidance on the establishment of social protection floors as part of national strategies for the extension of social security that progressively ensure higher levels of social security to as many people as possible. Social protection floors are nationally defined sets of basic social security guarantees which should ensure at a minimum that, over the life cycle, all in need have access to essential health care and to basic income security, which together secure effective access to goods and services defined as necessary at the national level.

The National Social Protection Strategy of Cambodia identifies indigenous peoples and ethnic minorities as special vulnerable groups for the purpose of designing tailored approaches (ADB 2014). In Viet Nam, 29 million poor people and members of ethnic minority groups have been provided with free health insurance (ILO 2015).

For many indigenous peoples, the lack of official registration at birth⁴¹ and, consequently, of identification documents poses a considerable obstacle to their access to social services. Besides preventing their enrolment in school, as noted above, this also impedes their admission to health services and access to justice (CEDAW 2014), affects their employment opportunities, and makes them particularly vulnerable to trafficking, especially in the case of indigenous children and women. In Thailand, for example, it has been estimated that 600,000 people out of the country's 2 million stateless people are from indigenous and minority backgrounds (UN-Women et al. 2013).

Countries such as Thailand and Viet Nam have been taking proactive measures to deal with this issue, including the legal recognition of the right to birth registration, abolition of the birth registration fee, and the provision for late registration (UN 2012d, CRC 2012a). Their geographical remoteness and the lack of rural infrastructure and transport also have a considerable impact on the availability and accessibility of social services (see, for example, IFAD 2012a). Even when these services are available, language barriers reportedly also affect their accessibility (see for example, CERD 2012b, ILO 2015c).

Regarding access to health care, some States have adopted special measures to address current obstacles faced by indigenous women and men. In Cambodia, although the National Health Strategic Plan (2008–2015) does not refer specifically to indigenous communities, special measures

41 A different trend with regard to birth registration has been noted in the predominantly indigenous north-eastern state of Mizoram in India, which shows a rate of 93 per cent of birth registration, much higher than the national average (UN-Women et al. 2013).

designed to ensure that indigenous peoples can gain access to health services and receive a culturally appropriate service are adopted under the Second Health Sector Support Programme. To this end, consultations have been undertaken with indigenous communities in the provinces of Ratanakiri, Mondulkiri and Kratie with a view to identifying their needs and challenges and key areas of intervention (ILO 2015b). In Viet Nam too, special programmes have been put into place to tackle the lack of access of ethnic minorities to health care.

Almost all communes in the mountainous regions and areas where ethnic minorities are concentrated are equipped with a commune health-care centre. Long distances, together with poor infrastructure and poverty, however, remain an abiding challenge for many people from ethnic minorities (ILO 2015a). Similarly, in the Lao People's Democratic Republic, basic health infrastructure has been set up in the remote areas where ethnic minorities live (IFAD 2012b) and the country's national social and economic development plan for the period 2011–2015 included among its objectives the provision of safe water supplies and improved sanitation for communities living in remote areas (AIPP 2015c).

In Nepal, the Gender and Social Inclusion Programme launched by the Ministry of Health to improve access to health services also recognizes traditional health systems and practices (CEACR 2016a). Notwithstanding that recognition, indigenous peoples' health continues to be seriously affected by food insecurity, chronic hunger and malnutrition, which stem, in large part, from the loss of lands, access to natural resources, and livelihoods (UN 2013a). There are also reports of the alleged adverse health impact of extractive projects owing to environmental contamination, particularly with regard to women's reproductive health (UN 2013a, AIPP 2015e; UN 2015c). Where disaggregated data are available, they show higher rates of maternal and neonatal mortality, stunting and malnutrition for indigenous people (see for example, CEDAW 2015 and CRC 2012a).

The absence of comprehensive and participatory social impact assessments of proposed development plans, relocations and, in many cases, the inadequate nature or total lack of compensation, often resulting from the non-recognition of indigenous peoples' rights to land and natural resources, continue to have an enormous impact on indigenous peoples throughout Asia. With few exceptions, such as the 2013 Land Acquisition Act in India (UN 2016d), when impact assessments are required prior to the approval of development plans and projects, those assessments are limited to environmental impacts (UN 2014b, UN 2015c).

Often alternative housing is not provided and resettlement and rehabilitation policies are not properly implemented (IFAD 2013, AIPP 2015c). For example, in India, according to the 2002–2007 five-year plan of the National Commission on Scheduled Castes and Scheduled Tribes, 8.54 million people from scheduled tribes were displaced from their traditional lands as a result of development projects. Of these, only 25 per cent were resettled. In the analysis conducted by the Commission, the displacement led to loss of assets, unemployment and debt bondage (UN-Women et al. 2013).

Likewise, studies indicate that, in the Lao People's Democratic Republic, Thailand and Viet Nam, the relocation of communities affected by development projects has often caused the disintegration of the affected communities because of the lack of economic and subsistence support, difficulties in finding an alternative livelihood, and tensions between other indigenous

and non-indigenous communities over limited land resources (UN-Women et al. 2013, CESCR 2014). The adverse effects of resettlements and sedentarization programmes on the cultural rights of the communities concerned are rarely taken into consideration.

5.5. Conclusions

The present chapter has reviewed examples of public policies, laws and practices relevant for the realization of the economic, social and cultural rights of indigenous women and men. Strikingly, most of the countries reviewed have adopted national development and poverty reduction strategies that recognize the disadvantaged social and economic situation of indigenous peoples, and some of these strategies also envisage targeted action in favour of indigenous peoples, including, for instance, in Bangladesh, India, Nepal and Viet Nam. Cambodia and the Philippines have also explicitly emphasized in their policies the right of indigenous peoples freely to pursue their economic, social and cultural development and decide their related priorities, inspired by Convention No. 169 and UNDRIP. This is consistent with these countries' recognition of indigenous peoples and laws and policies regarding consultation and participation, land and natural resources, and recognition of their distinct cultures and identity.

The overall picture with regard to general development strategies and approaches, however, is characterized by insufficient attention to indigenous peoples as distinct collectivities and to their participation in the design and implementation of development plans, projects and programmes. Lack of participation, in practice, means that their needs, priorities and aspirations cannot be appropriately addressed, and that decisions on their development are made by others from the outside, without heeding the voices or following the leadership of indigenous peoples.

All the countries reviewed in this study have taken dedicated measures in the field of education and culture targeting indigenous peoples. Such measures could be further strengthened as they are crucial for promoting respect for indigenous cultures, identities and ways of life, for combating negative stereotypes that underpin and nurture assimilationist attitudes and approaches, and for ensuring the access of indigenous girls and boys to quality education.

Regarding more specifically the education system, many States have considered the provision of mother-tongue-based bilingual education, the teaching of indigenous languages and the adoption of special measures to ensure equal opportunities to access education for indigenous girls and boys. Some progress has indeed been made towards improving indigenous children's enrolment in school. Illiteracy and drop-out rates, however, particularly after primary education level, for indigenous girls and boys remain higher than national averages owing to a range of different factors, including, among others, discrimination, language barriers, lack of facilities and teachers, the content of school curricula, distances and costs. Only in a few countries, such as Nepal and the Philippines, does the national legislation recognize the right of indigenous peoples to establish and manage educational institutions.

Ensuring access to decent work and social protection for indigenous women and men is a key policy area for ensuring inclusive and sustainable development in Asia, where two thirds of the world's indigenous people live. Given that a vast majority will live in rural areas, policies for rural development are a key entry point for addressing the rights and needs of indigenous peoples. Enabling security of land tenure through effective recognition and protection of rights to land, as discussed in chapter 4 above, is important for ensuring that indigenous peoples can engage in their traditional livelihoods and occupations.

Most of the countries reviewed have policies that emphasize support to communities through access to training and skills development, entrepreneurship and enterprise development and access to markets and credit. Prejudices and negative attitudes towards indigenous peoples and their traditional livelihood activities and practice, however, such as shifting cultivation, continue to inform decision-making processes and public policies on these issues.

Only in some countries do public policies embody a specific focus on health and social protection for indigenous women, men and children, despite the fact that available data suggest that they are disproportionately represented among the poor. For instance, Cambodia's National Social Protection Strategy identifies indigenous peoples as a group requiring targeted approaches. In Viet Nam, special health programmes targeting ethnic minorities have been devised. In many countries, indigenous peoples lack official birth certificates or identification documents, which significantly impedes access by indigenous peoples to social services in Asia.

Nevertheless, all countries examined for this study have adopted some special measures targeting indigenous peoples with regard to their social, economic and cultural rights, including in relation to health, education, employment and occupation. This provides many entry points for efforts to further review and strengthen these measures in the context of the SDGs. Raising awareness of indigenous cultures and traditions, taking into account indigenous peoples' rights, ensuring their participation and the inclusion of both indigenous women and men in processes that lead to decisions on public policies and development plans and priorities will be critical in this context. Likewise, addressing the prevailing invisibility in many countries of indigenous peoples in official data will be essential for the identification of their needs and the formulation of appropriate policy responses.



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6. Looking ahead: recommendations as to the way forward

Asia is an immensely diverse region, hosting two thirds of the world's indigenous peoples who, in aggregate, represent 2,000 distinct civilizations and languages. Although in the laws and policies of the countries concerned these groups are referred to in many different ways, they have much in common in terms of their lifestyle, culture, customs and social institutions, and the way that their culture and existence are unusually contingent on their special relationship with their land, which distinguishes them from other parts of the national populations of the countries in which they live. Differences in positions and views relating to the concept of indigenous peoples have not prevented countries in the region from taking steps to address the specific situation of these groups.

The present study has sought to provide an overview of laws, policies and other measures in place in selected countries in Asia relevant to indigenous peoples' rights and development. The overview focused on four main thematic areas, namely identification and recognition of indigenous peoples; consultation and participation; land and natural resources; and public policies on cultural, social and economic rights. The study was undertaken against the backdrop of an unprecedented convergence towards integrated and human rights-based approaches in the global agendas on sustainable development and climate change, which also call for particular attention to the rights of indigenous peoples.

As repeatedly pointed out in the study, Asia is an extremely diverse region and host to two thirds of the world's indigenous peoples. Ensuring inclusive development is the major challenge currently facing the region. Despite the sustained growth and the efforts deployed to reduce poverty among its population, considerable social and economic gaps persist between indigenous and non-indigenous groups which derive from historical processes of their marginalization and domination.

In most of the countries reviewed for this study, national development and poverty reduction strategies specifically acknowledge the disadvantageous social and economic conditions of indigenous peoples. Some of them expressly envisage specific and targeted actions to address the needs of these peoples. Unless mindful of and informed by the human rights of indigenous peoples, however, these strategies risk failing to address their situation and may even aggravate it further.

The review of national experiences has illustrated that numerous countries in the region have moved ahead in promoting the rights and development of indigenous peoples, although many policy and protection gaps and challenges remain. While the nature of the study does not allow for specific recommendations to individual countries, several broader recommendations guiding future action in the region are set out below.



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Recommendation 1: Promoting ownership of the concept of indigenous peoples and valuing their cultures and contributions

A key recommendation to relevant policymakers and decision-makers is to take greater national and regional ownership of the concept of indigenous peoples across the Asian region, relying on the guidance available from Convention No. 169 and UNDRIP. Such initiatives could involve national and regional multi-stakeholder dialogues. In this connection, governmental and non-governmental stakeholders should carry out educational programmes and awareness-raising measures to combat prejudices and negative stereotypes against indigenous peoples, which often are at the root of their non-recognition and exclusion from public policies. Accordingly, valuing indigenous peoples' culture, practices and knowledge as contributions to the country's sustainable development and acknowledging the need for differentiated and participatory approaches to address the underlying causes of their marginalization and effective inequalities is particularly important.

Such action will be important for laying the ground for progress in addressing the rights and development needs of indigenous peoples in national laws, policies and programmes. In turn, this will be pivotal for the success of countries' overall development strategies and poverty reduction efforts, as they strive to tackle the underpinning causes of indigenous peoples' marginalization.

It is relevant in this context that most countries in the region have ratified UN human rights treaties or ILO Conventions that are particularly relevant to addressing the current marginalization of indigenous peoples, and hence have obligations under international law in this regard. As called for by the 2030 Agenda for Sustainable Development, development strategies designed to implement the Agenda should be coherent and consistent with countries' international human rights obligations.

Recommendation 2: Seizing the momentum of the 2030 Agenda and the Paris Agreement on climate change: indigenous peoples as partners and agents of change

The 2030 Agenda for Sustainable Development and the Paris Agreement on climate change offer unique opportunities for countries in the region to launch new forms of dialogue and cooperation among national stakeholders for development and climate change action, including indigenous peoples' networks and organizations. Dialogue between indigenous peoples and State institutions in this context could involve community-based participatory assessments of needs, priorities and strategic interventions to enhance indigenous peoples' occupations and to strengthen their livelihoods and economic activities, which would play a crucial role in informing local and national development strategies.

There is an urgent need to enhance the availability of knowledge and data on the social and economic situation of indigenous communities. Targeted research on the employment and working conditions of indigenous peoples could be envisaged, given the relatively scarce information available; furthermore, participatory assessments of indigenous peoples' vulnerabilities to climate change and comprehensive impact assessments of mitigation and adaptation strategies should be undertaken. Documentation of indigenous peoples' experiences based on their traditional knowledge and practices relevant to the design of climate change responses could also be envisaged, with the participation of the peoples concerned.

Recommendation 3: Taking action to ensure indigenous peoples' consultation and participation through appropriate mechanisms and procedures

The realization of indigenous peoples' rights to consultation and participation and the effective recognition and protection of their rights to lands and natural resources are fundamental to enabling inclusive development that takes into account indigenous peoples' own priorities and aspirations. Across the region, there is a need for policymakers and decision-makers to review the current situation, engage with indigenous peoples, and to devise specific actions to enhance the participation of indigenous peoples in public affairs, including the development, implementation and monitoring of development plans.

This also calls for renewed attention in the countries in the region to establishing dedicated mechanisms and procedures for consultation with indigenous peoples on measures that may directly affect them, including development projects. Engaging in country-based participatory assessments of existing consultation and participation arrangements can provide a first step in this regard.

Recommendation 4: Securing indigenous peoples' rights to land and natural resources

Action to secure the effective recognition and protection of indigenous peoples' rights to land and natural resources will be crucial for ensuring livelihoods, food security, and safeguarding the cultural integrity and traditional knowledge of indigenous peoples in the region. It would be advisable to consider incorporating in the legislation the recognition of indigenous peoples' customary rights to lands and natural resources, and undertaking assessments of the legislation in force, in collaboration with indigenous peoples, to identify the measures needed to address current implementation gaps and bottlenecks, including simplification of land-titling procedures and strengthening of government agencies' implementing capacity. Reviews of legislative frameworks to ensure coherence across sectoral legislation should also be envisaged.

Recommendation 5: Improving availability, accessibility and appropriateness of public services

Most countries in the region have taken some special measures to ensure the enjoyment of economic, social and cultural rights by indigenous women and men. Future policy assessments and improvements should seek to strengthen these measures by extending their reach, accessibility and cultural appropriateness, and by increasing cooperation by the State with indigenous communities in the design and delivery of support schemes. This undertaking could be facilitated through the participatory documentation of self-managed programmes, with a view to identifying lessons learned.

Furthermore, community-based surveys could be envisaged in order to collect background information for the formulation of appropriate public policies, including the design of affirmative action measures, in collaboration with indigenous peoples. The holistic and participatory design of social protection measures that respect the livelihood framework of indigenous peoples could also be promoted.

Recommendation 6: Focus on indigenous women

Renewed action in Asia to promote the rights and development of indigenous peoples should include a specific focus on indigenous women. Supporting empowerment, including the economic empowerment of indigenous women within and beyond their communities, is needed not only to ensure respect for their rights and gender equality, but also because their contributions are vital for achieving more general development and climate-action goals.

Specific attention should be paid to ensuring the equal participation of indigenous women in dialogue and consultations with State institutions at all levels, their access to land and natural resources, and the accessibility to them of public services. National efforts to combat violence against women should address the situation of indigenous women, with their full involvement. Initiatives to increase knowledge and data on the social and economic situation of indigenous peoples should specifically address the situation of indigenous women.

Recommendation 7: Promoting ratification of Convention No. 169

Although UNDRIP enjoys wide support in the region, only one country, Nepal, has so far taken the step of ratifying Convention No. 169. At the same time, at the 2014 World Conference on Indigenous Peoples, all UN Member States were urged to consider ratifying the Convention. Exploring the ratification of Convention No. 169 can facilitate both the identification of indigenous and tribal peoples within the meaning of the Convention and also the development of legislative and policy frameworks that address persisting social and economic disparities in diverse national societies in a rights-based and balanced manner.

Countries that wish to consider ratification could engage in preliminary assessments to study the implications and added value of that step, through processes involving ILO constituents (namely, government, workers and employers organizations), indigenous peoples and other relevant stakeholders, as appropriate. The ILO has encouraged countries that have already ratified the Indigenous and Tribal Populations Convention, 1957 (No. 107) to consider ratification of Convention No. 169, the ILO's most recent instrument on indigenous and tribal peoples.

Recommendation 8: Building national capacities

Tackling the remaining gaps and challenges will require renewed efforts to build the capacities of a wide range of national stakeholders, including governments, indigenous peoples' organizations and institutions, employers' and workers' organizations, national human rights institutions, parliamentarians, the judiciary, non-governmental organizations, educationalists and the media.

In addition to strengthening the capacity of individuals, capacity needs to be sustainably entrenched in institutions in order to ensure that policy, legal and institutional reforms can be followed through. On government side, more attention is needed to ensure effective coordination and cooperation across line ministries responsible for matters relating to indigenous peoples' rights and development. Documenting and sharing experiences across the region can support and reinforce national processes.

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Annex 1 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)

Convention No. 169

CONVENTION CONCERNING INDIGENOUS AND TRIBAL PEOPLES IN INDEPENDENT COUNTRIES

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 76th Session on 7 June 1989, and

Noting the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and

Recalling the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

Considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards, and

Recognising the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live, and

Noting that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded, and

Calling attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding, and

Noting that the following provisions have been framed with the co-operation of the United Nations, the Food and Agriculture Organisation of the United Nations, the United Nations Educational, Scientific and Cultural Organisation and the World Health Organisation, as well as of the Inter-American Indian Institute, at appropriate levels and in their respective fields, and that it is proposed to continue this co-operation in promoting and securing the application of these provisions, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957,

adopts this twenty-seventh day of June of the year one thousand nine hundred and eighty-nine the following Convention, which may be cited as the Indigenous and Tribal Peoples Convention, 1989:

PART I. GENERAL POLICY

Article 1

1. This Convention applies to:
 - (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
 - (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.
2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.
3. The use of the term “peoples” in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

Article 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.
2. Such action shall include measures for:
 - (a) ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;
 - (b) promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;
 - (c) assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

Article 3

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.
2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.

Article 4

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.
2. Such special measures shall not be contrary to the freely expressed wishes of the peoples concerned.
3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

Article 5

In applying the provisions of this Convention:

- (a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;
- (b) the integrity of the values, practices and institutions of these peoples shall be respected;
- (c) policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

Article 6

1. In applying the provisions of this Convention, governments shall:

- (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
- (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;
- (c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

Article 7

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

Article 8

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

Article 9

1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.

2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

Article 10

1. In imposing penalties laid down by general law on members of these peoples account shall be taken of their economic, social and cultural characteristics.

2. Preference shall be given to methods of punishment other than confinement in prison.

Article 11

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

Article 12

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

PART II. LAND

Article 13

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

2. The use of the term "lands" in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

Article 16

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

Article 17

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

Article 18

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

Article 19

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

- (a) the provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;
- (b) the provision of the means required to promote the development of the lands which these peoples already possess.

PART III. RECRUITMENT AND CONDITIONS OF EMPLOYMENT

Article 20

1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.

2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:

- (a) admission to employment, including skilled employment, as well as measures for promotion and advancement;
- (b) equal remuneration for work of equal value;
- (c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;
- (d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.

3. The measures taken shall include measures to ensure:

- (a) that workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;
- (b) that workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;
- (c) that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;
- (d) that workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.

PART IV. VOCATIONAL TRAINING, HANDICRAFTS AND RURAL INDUSTRIES

Article 21

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

Article 22

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.

2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.

3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively

assume responsibility for the organisation and operation of such special training programmes, if they so decide.

Article 23

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted.

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

PART V. SOCIAL SECURITY AND HEALTH

Article 24

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

Article 25

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.

4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.

PART VI. EDUCATION AND MEANS OF COMMUNICATION

Article 26

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

Article 27

1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.

2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.

3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

Article 28

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.

3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

Article 29

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.

Article 30

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.

2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.

Article 31

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

PART VII. CONTACTS AND CO-OPERATION ACROSS BORDERS

Article 32

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

PART VIII. ADMINISTRATION

Article 33

1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.

2. These programmes shall include:
- (a) the planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention;
 - (b) the proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned.

PART IX. GENERAL PROVISIONS

Article 34

The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

Article 35

The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

PART X. FINAL PROVISIONS

Article 36

This Convention revises the Indigenous and Tribal Populations Convention, 1957.

Article 37

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 38

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 39

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 40

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 41

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 42

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 43

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides –

- (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 39 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 44

The English and French versions of the text of this Convention are equally authoritative.

Annex 2 – United Nations Declaration on the Rights of Indigenous Peoples, 2007

United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights⁴² and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action,⁴³ affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights⁴⁴ and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

42 See resolution 2200 A (XXI), annex.

43 A/CONF.157/24 (Part I), chap. III.

44 Resolution 217 A (III).

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

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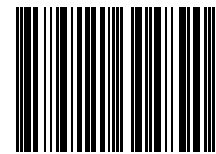
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